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ABSTRACT

In fall 1990, the U.S. Department of Agriculture's (USDA's) Food and Nutrition Service (FNS) contracted with Price Waterhouse to complete a study of the use of food-service management companies (FSMCs) by school districts that participate in the National School Lunch Program (NSLP) and the Tentative findings include: (1) contracts between school districts and FSMCs address some, but not all basic school nutrition requirements; they varied considerably in their compliance with and operate school nutrition programs. This document presents the findings of a review of a nationally representative sample of contracts between school districts and FSMCs, and describes the extent to which these contracts reflected established criteria for contracting with FSMCs. The report describes FSMCs and the contractual controls available to school districts, the range of food services provided by FSMCs, the financial terms of the contracts, and other contractual and business issues. Findings indicate that: (1) contracts between school districts and FSMCs address some, but not all basic school nutrition requirements; they varied considerably in their compliance with regulatory requirements about key school district responsibilities; (2) contracts generally conformed to USDA regulations on payment structures; (3) many contracts contained accounting requirements, but provided limited guidance on reporting and accountability; and (4) contracts generally described the services that FSMCs were expected to provide; however, there was wide variation in the numbers of services to be provided and the detail with which these services were described. Forty tables and four exhibits are included. Appendices describe study methodology and contract origins. (LMI)

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United States
Department of
Agriculture

Food and
Nutrition
Service

Office of
Analysis and
Evaluation

Study of Food Service Management Companies in School Nutrition Programs

Contract Review Results

June 1994

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Overview

During Fiscal Year 1992, the Federal government invested over $5.2 billion to support the operation of school nutrition programs. The twin objectives of these programs are to provide nutritious meals for the nation's children and to support American agriculture by providing an effective outlet for surplus farm production. The National School Lunch Program (NSLP) and the School Breakfast Program (SBP) are two of the Food and Nutrition Service's (FNS's) Child Nutrition Programs. At the local level, these programs are operated by a School Food Authority, or SFA. The SFA is responsible for providing meals to school children in a manner that conforms with FNS and State program requirements. In 1970, FNS published regulations allowing local school districts to contract with Food Service Management Companies (FSMCs) for the purpose of operating school food services. Since that time, there have been few studies focusing on FSMCs that operate in school districts, and the available descriptive information is limited.

In the Fall of 1990, FNS contracted with Price Waterhouse to complete a study of the use of FSMCs by school districts that participate in NSLP and SBP. The propose of the study is to collect descriptive information about the use of FSMCs to manage and operate school nutrition programs -- information that is not presently available. The study is being conducted in three phases: a review of contracts between school districts and FSMCs; a survey of a sample of school districts using FSMCs and a matching sample of school districts that have never used FSMCs; and case studies of ten school districts that have had experience using FSMCs.

This report presents the findings of review of a nationally representative sample of contracts between school districts and Food Service Management Companies, and the extent to which these contracts reflect established criteria for contracting with FSMCs. The report provides a general description of FSMCs, and describes the contractual controls available to school districts, the range of food services provided by FSMCs, the financial terms of the contracts and other contractual and business issues. The objective of the contract review is to provide FNS with an initial understanding of the frequency and range of procedures, contractual agreements, and the services provided by FSMCs to school districts. The contract review is not designed to serve as an audit of FSMCs, nor to measure the level of FSMC contract

compliance to Federal, State, or local regulations. Rather, the review is intended solely to be descriptive.

Background

Federal Child Nutrition Programs

The Child Nutrition Programs administered by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) are an essential part of the nation's commitment to improved nutrition. The five Federal programs include: the NSLP; the SBP; the Special Milk Program (SMP); the Child and Adult Care Food Program; and the Summer Food Service Program. These programs operate in each of the fifty States, Trust Territories, and Possessions. Three of these programs -- NSLP, SBP, and SMP -- are school-based. They are operated primarily by local public school districts, private schools, and institutional programs for children operated by the States. A small number of local programs are administered by FNS Regional Offices. This study focuses on the NSLP and the SBP, because it is mainly for these two programs that school districts look to FSMCs for management and operational assistance.

Food Service Management Companies

School districts may contract with FSMCs for many aspects of their meal programs. The commercial organizations that contract with school districts for the purpose of operating food services include large national corporations such as Marriott, Canteen, and ARA, corporations operating regionally or at multiple sites in a State, and small companies servicing a single school district. The services sought by a school district are likely to include some combination of management and operational services including:

- Food service operations, including meal planning, food purchasing, storage, preparation, packaging, and service to students;
- Accounting services and design of financial controls, budgets, and reporting systems, including those required for State and Federal reports;
- Facilities design, equipment maintenance and replacement, cleaning services;
- Staffing and personnel management; and,

- Providing support activities such as marketing and promotion of school lunch and breakfast programs, and providing nutrition information and education programs.

FNS requires that school districts contracting for these services retain authority over their school food programs to ensure that programs are administered in an accountable manner and all program regulations are met. In most instances, the official responsible for exercising this authority is a school district's business manager.

Duties that school districts *cannot* delegate to FSMCs are listed in Title 7 CFR § 210.16, and include:

- Ensuring that food service operations are in conformance with the SFA's agreement under the NSLP and SBP;
- Monitoring the food service operation through periodic on-site visits;
- Retaining control of the quality, extent, and general nature of food services, including the prices to be charged for meals;
- Ensuring that all Federally donated foods made available to an FSMC are fully used to the benefit of the school food service;
- Maintaining applicable health certification; and
- Establishing an advisory board of parents, teachers, and students to assist in menu planning.

In addition, when contracting with an FSMC, school districts must adhere to the following procurement standards as specified in Title 7 CFR § 210.16.

- States and SFAs can use State or local procurement procedures so long as they conform to applicable Federal regulations (7 CFR Part 3015);
- Sanctions for nonperformance are to be specified and applied;
- Contracts that permit cost accrual, cost-plus percent of cost, or cost plus a percent of income are prohibited;

- Contracts that provide for a fixed fee, such as a management fee, are permitted;
- FSMCs must maintain and make available auditable records;
- Contracts must be for a period not exceeding one year, with up to four annual renewal periods; and
- All contracts must permit for-cause cancellation by either party with 60-day notification

FNS Guidance

In October of 1992, FNS issued *Guidance for School Food Authorities; Contracting with Food Service Management Companies*. This guidance, which is based on existing regulations, is intended to inform school districts about the contracting process and provides a single-source compilation of school district responsibilities with respect to food service management companies. It reinforces existing regulatory language about the specific responsibilities that a school district must retain. The guidance provides extensive information about the procurement process, the decision-making process that a school district should follow when deciding to contract for food service management, and the appropriate contracting vehicles. Much of the guidance focuses on the actions that lead to the actual contract.

The contracts sampled for this analysis were chosen before the guidance was prepared and released. Comparisons with the guidance provide an indication of how well existing contracts meet current regulations. The reason for this is that all current FNS regulations were in effect when the sample of contracts was entered in to or renewed. The guidance issued by FNS have important implications for future FSMC contracts. Although prepared independently, many of the findings of this analysis reinforce the guidance provided by FNS.

Contracting Considerations

FNS advises school districts to consult their State Agencies and neighboring FSMC districts for information before contracting with a management company. Among other things, districts should thoroughly research the total costs of operating the food service and solidify their food service goals.

If the decision has been made to contract the school food service, the district then needs to decide on a method of procurement. The two methods discussed in FNS's guidance material are competitive sealed bids and competitive negotiation. Competitive sealed bids, which use an Invitation for Bid (IFB) process, are useful to districts that have identified exactly the services and costs to be delegated to the FSMC. The IFB process also provides for a more simple contract evaluation and monitoring process than is possible with other methods. The competitive negotiation process, which involves the use of a Request for Proposals (RFP), is better suited to districts that desire flexibility in selecting an FSMC because they are uncertain of the approach they want to take in contracting their food services. The RFP process requires that districts be able to critically evaluate the submitted proposals and later monitor the contract. Cost-reimbursable contracts are only possible through the RFP process. Under either method, the district must provide a clear and realistic description of the services desired under a FSMC contract. The FNS guidance provides further description of the regulations that address the evaluation of bids and proposals.

Program regulations require State agencies to review the contract prior to issuance of a bid or after negotiations are complete, whichever situation is applicable. State agencies may also review the RFP before it is released.

District Responsibilities

The responsibilities that FNS designates as district responsibilities must be present in every district contract with an FSMC. Among these responsibilities are:

- Signature authority on reimbursement claims;
- All phases of the free-/reduced-price meal approval process
- Control of the school food service account;
- Establishment of all program and non-program meal and a la carte prices;
- Title to USDA-donated foods;
- Development of the cycle menu, where possible;
- Establishment and maintenance of a parent/teacher/student advisory board to assist in menu planning;
- Maintenance of applicable health certifications at the SFA facility; and
- Control of the quality, extent, and general nature of food service.

School districts must monitor FSMC compliance with the contract and any other applicable Federal, State, or local regulations. The district should also maintain thorough documentation of this monitoring.

FSMC Responsibilities

FNS also defines several requirements for management companies that contract with school districts. Chief among these is the period over which FSMCs must keep records on file. The FNS guidance states that the FSMC must retain all records relevant to district claims and Federal laws and regulations for three years from the close of each year's contract. Every FSMC contract must include some mention of this requirement. The records must be available for audit by representatives of the district, State Agency, USDA, or the General Accounting Office at any reasonable time and place. Unresolved audit findings may force retention of records beyond three years.

All revenue and any expenses charged to the district must flow through the district food service account. Each contract must attempt to guarantee this by specifying that the school food service account will remain under district control. Along the same lines, FNS requires that USDA commodities accrue only to the benefit of the district's non-profit school food service. An FSMC must keep accurate and complete records with respect to the receipt, use, storage, and inventory of donated foods. All contracts should indicate that commodity processing rebates are the property of the district. Furthermore, all proceeds from these rebates must be utilized by the district's non-profit food service program.

Finally, if an FSMC uses outside food preparation facilities, it must maintain health certifications for any off-site facilities for the duration of its contract. This requirement does not extend to on-site facilities, which are the responsibility of the district. Of course, the FSMC must meet all applicable State and local health regulations for every facility it operates in relation to food service.

Required Contract Language

FNS specifies that certain language must appear in every FSMC contract. These clauses concern unsatisfactory meal service, contract termination, and compliance with relevant Federal Acts.

The first required clause sets forth the procedure in case meal service does not meet certain standards. The clause must state that spoiled or unwholesome meals, and those not meeting the specifications of the contract will not be remunerated. Each

contract must also include a termination clause to be applied by either the district or the FSMC to nullify the contract. Sixty-day notification by either party is required for contract termination. In addition, the contract should detail penalties for instances where contract terms are breached. The guidance advises that the statute of limitations on contract grievances be linked to either the State Agency's required document-retention period, or three years, whichever is longer.

The final contract language requirement is designed to ensure FSMC compliance with Acts relevant to food service. All contracts must require compliance with the Fair Labor Standards Act and the Occupational Safety and Health Act, among others.

Suggested Provisions

FNS also suggests, without requiring, that contract provisions appear in FSMC contracts regarding the following:

- Compliance with the Civil Rights Act of 1964, although this is mainly a district responsibility;
- Compliance with Buy American provisions in food purchasing; and
- A provision stating that any omissions from the contract should imply that "best commercial practices" are expected in that area.

Overview

This section describes how contracts between school districts and food service management companies (FSMCs) and other related documentation were collected, reviewed, and prepared for analysis.

Sample Selection

A total of 905 school districts contracted with FSMCs in the 1990-91 school year. A sample of 135 of these districts was selected for the study. The sample size was computed to provide a 95 percent confidence level and estimates that, on average, have a precision of +/-7.3 percent. Stratification by enrollment size of the school district was used to ensure proportional representation of the population of school districts using FSMCs. Contracts were obtained for 132 districts.

Contract Acquisition

In May of 1991, each of the 24 State Agencies with a school district in the sample was contacted by letter and telephone and asked to provide a copy of the contents of their contract files for each of the sampled school districts. Specific instructions on the types of contract-related documents were contained in the request. Though most State Agencies were able to respond to the request, extensive follow-up was necessary. This follow-up included correspondence, telephone calls, and visits to State Agencies to assist with file retrieval and photo-copying.

Of the contract files received, 57 percent contained the contract document only, while the remainder contained both the contract and supporting documents including bid specifications, RFPs, and/or amendments.

Contract Abstraction

Each of the 132 contracts was given a structured review of content, and data were abstracted. These data were then entered into a data base and serve as the basis of the analysis presented herein.

Prior to collecting the contracts, a small group of contract files were reviewed to identify the typical clauses, terms and services likely to be contained in a contract between a school district and an FSMC. A review form was prepared which incorporated the full range of data that might be available in each contract. Data elements corresponding with each clause, term, and service area were assigned a basic set of numeric codes that could be entered

into a database. This document was used to ensure that data were abstracted consistently. Staff with accounting and audit training conducted the reviews.

The review focused on the following aspects of the contract document:

- Reference to and incorporation of Federal and/or State contracting laws or regulations;
- Provisions that enable school districts to control FSMC performance and costs;
- Food service management duties and responsibilities of the FSMC and the school district's school food authority (SFA);
- Basis for fee payment, and payment conditions;
- Statement of assumptions serving as the basis for fees;
- Monetary guarantees included in the contract specifications;
- Other contractual issues such as reporting, personnel, and insurance.

Care was taken to avoid interpretations and conjecture about the intent of contract language. If there was any doubt about the specificity of a point of fact (e.g., a service provided or a requirement placed upon the FSMC by the school district) the coding attempted to reflect this uncertainty. Virtually all of the information was coded into numeric categories, most of which reflects the presence or absence of a point of information. Each reviewer re-examined the information recorded on the abstracting form to ensure that all fields were accurately and properly completed. In those instances where the reviewer was unable, based on the available information, to make a determination, this fact was documented. A sample of all abstracting was independently reviewed against the original contract. Supervisory staff reviewed all work.

Once the contracts and completed data input forms were reviewed by the supervisor, the data were keyed into a series of spreadsheets. Codes for descriptive text entries appeared in the database. The completed spreadsheets were reviewed against the

data forms, converted to a SAS data set, and subjected to tests for missing or illogical data (see Appendix A), and then tabulated.

Data Analysis

The first step in the analysis was to prepare tabulations for each variable. After reviewing the variables individually, they were combined into logically related groups that correspond to each of the chapters in this report. It was also necessary to combine variables into more meaningful measures. To illustrate, the terms of payment or fee structure of contracts were not simple constructs such as per meal cost plus an administrative fee. Often there are multiple fees -- administrative, management -- and the basis for the application of the fee might be per meal or an annual value. Numerous permutations were identified and considerable effort was required to adequately define the combinations. This was done to avoid the possibility of misleading results if simple (duplicated) counts were reported for the number of contacts that used a particular type of fee. The tabulations were submitted to FNS for review.

The contract review data are largely descriptive. Considerable analysis was undertaken to identify patterns that might be attributed to specific causes such as degree of involvement of State Agencies, size of the food service management companies, size of school district, and extent to which the contract provided school districts with adequate control over the performance of the FSMC. These variables add little useful new information about variations in contract terms and conditions.

A more detailed discussion of the file review methodology appears in Appendix A. Appendix B contains a discussion of the probable origin of contracts. The report contains selected tabulations.

Overview

This chapter provides descriptive information about the use of private Food Service Management Companies (FSMCs) by school districts to manage their school nutrition programs. Information is provided about the population of FSMCs and their patterns of involvement in the NSLP.

Use of FSMCs

Child Nutrition State agencies identified 905 NSLP school districts as using a Food Service Management Company in School Year 1990-91. In comparison, the Office of Inspector General, USDA, identified 839 school districts that used an FSMC during School Year 1987-88. According to the Child Nutrition Program Operations Study[1], 12,898 public and 3,381 private school districts participated in the NSLP in School Year 1990-91. Thus, 5.6 percent of school districts participating in the NSLP used a FSMC during the School Year 1990-91. The majority of these districts (93.4 percent) were public school districts. Most public school districts that used an FSMC had between 1,200 and 5,000 students (see Table 3-1). All private schools that used an FSMC had fewer than 1,200 students.

The proportion of public and private school districts that use FSMCs varies greatly by State. In some States, no school districts use an FSMC, while in others, up to 27 percent of school districts use an FSMC.[2] Overall, FSMCs operated in 33 States during the 1990-91 School Year.

FSMC contracting is most heavily concentrated into four areas of the United States. Exhibit 3-1 shows that FSMC use is concentrated in the Northeast, the Midwest, Texas, and the West Coast. States outside these areas have five or fewer districts that use FSMCs. Only three States in the South have districts that use FSMCs. The States with a high concentration of districts using FSMCs tend to be those with numerous small school districts, rather than large, county based school districts.

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1 St. Pierre, Robert et al., Child Nutrition Program Operations Study. Prepared for USDA Contract No. FNS-53-3198-7-32, January 1992.

2 The State Child Nutrition Agency in those States with high numbers of school districts using FSMCs provided information on the total number of NSLP school districts.

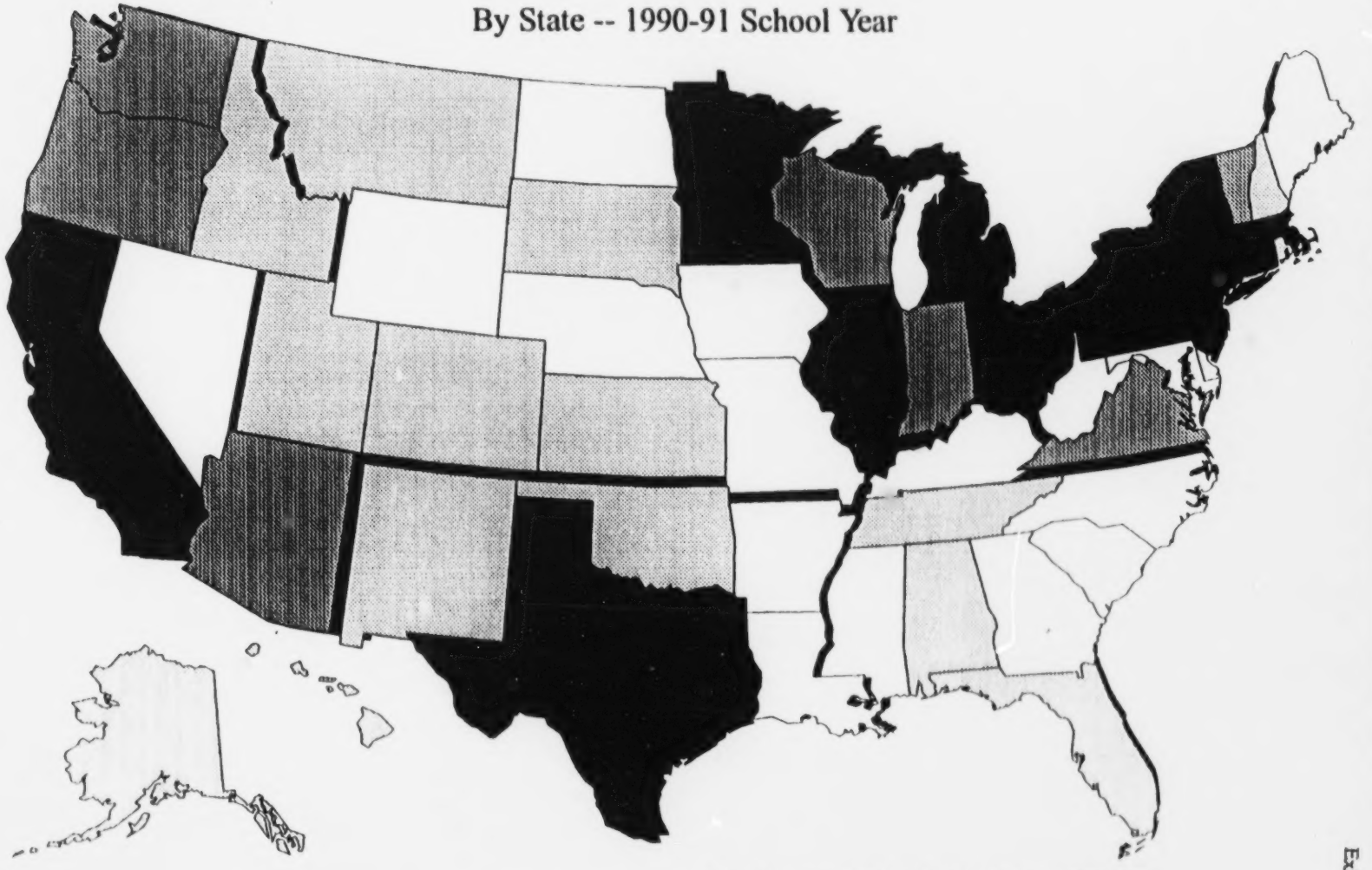
Table 3-1. School Districts using an FSMC in School Year 1990-91

Type of district	Districts in U.S.	Percent of Total	Districts using FSMCs	Percent using FSMCs
Public				
	8,111	54.3%	170	2.1%
Fewer than 1,200 students	4,986	33.3%	521	10.4%
1,200 - 4,999 students	932	6.2%	116	12.4%
5,000 - 9,999 students	922	6.2%	39	4.2%
10,000 or more students	14,951	100.0%	846	5.7%
TOTAL				
Private				
	13,686	99.6%	59	0.4%
Fewer than 1,200 students	50	0.4%	0	0.0%
1,200 - 4,999 students	0	0.0%	0	0.0%
5,000 - 9,999 students	1	0.0%	0	0.0%
10,000 or more students	13,737	100.0%	59	0.4%
TOTAL				

Source: School district population taken from MDR, Inc.
FSMC population from State Child Nutrition Agencies

Concentration of NSLP School Districts Using Food Service Management Companies

By State -- 1990-91 School Year



* Bold outline indicates FNS Regions

Source: State Child Nutrition Agencies

Exhibit 3-1

Level of District Experience with FSMCs

While many school districts have been using an FSMC for only a few years, some school districts have used contracted food service management for over 20 years. Most school districts that currently use an FSMC began using FSMCs within the last twenty years. On average, a district using an FSMC in School Year 1990-91 had used an FSMC for 9 years. Districts that presently use an FSMC began using FSMCs at a steady rate (about 30 new contracts per year) during the 1970s. In 1980, the contracting rate increased to approximately 60 new contracts per year, and this rate of new, or first time, contracts has remained constant for most years since. During the same period, school districts renewed contracts and continued to use FSMCs. Exhibit 3-2 shows the years in which districts that currently use an FSMC began contracting for food service management.[3]

Among districts that are currently using an FSMC, most have used the same contractor for 6 to 7 years. While just over 10 percent are in their first year of contracting with their current FSMC, some districts have used the same FSMC for over 20 years. School districts that have changed contractors use the same FSMC for 3 to 4 years, on average. However, some districts have changed FSMCs before completing one year of contracting.

Until 1988, districts that contracted with FSMCs were required to conduct a full procurement for FSMC services for a base year plus two option years. At the end of the third year, a full open procurement was required. In 1988, these regulations were changed to allow up to four one year renewals after the base year. Thus, districts that signed contracts with FSMCs from School Year 1988-89 to the present have been permitted up to four option years[4]. Therefore, districts that used an FSMC in School Year 1990-91 will need to renew contracts between School Years

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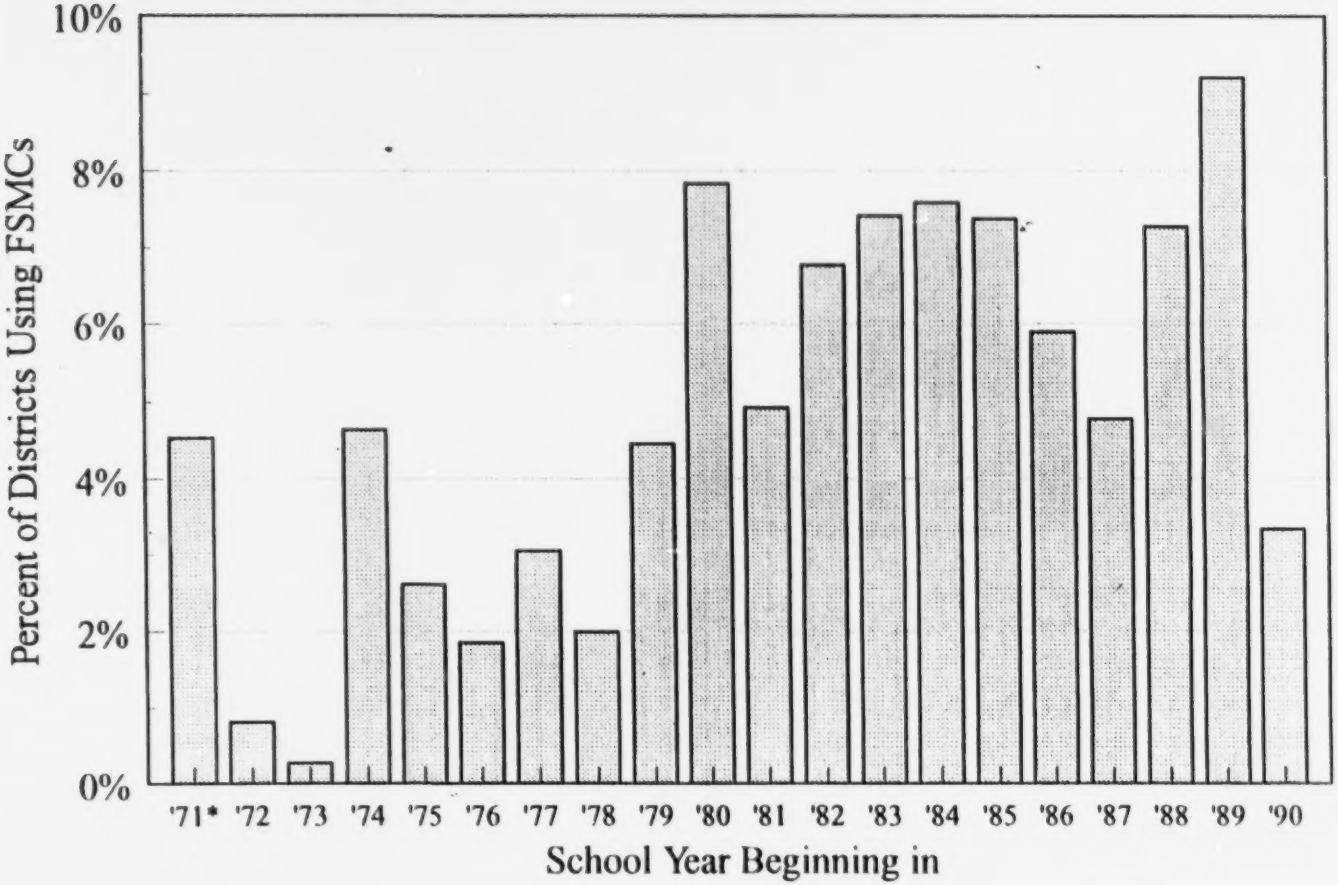
[3] Since Exhibit 3-2 only captures the years of experience with FSMCs for districts that currently use FSMCs, the apparent trend in FSMC use is biased towards more recent years. It does not reflect the history of FSMC use for districts that no longer contract with FSMCs. For example, districts that used an FSMC between 1982 and 1985 that are currently self-managed are not captured in the graph.

[4] New Jersey and New York regulate the length of contract base periods and option years that differ from the standard limit of four one-year renewals.

First Year of FSMC Contracting

Percent of Districts that began FSMC Contracting in each Year since 1971



* Note: 1971 or before

Source: Survey of Districts

Exhibit 3-2

1993-94, 1994-95, or 1995-96, depending on their contracting cycle (assuming that all one-year options are exercised). Approximately 28 percent of school districts using FSMCs will need to conduct procurements in 1993, 39 percent in 1994, and 33 percent in 1995. The contracting guidelines issued by FNS in October of 1992 should be reflected in the new contracts as they take effect.

FSMC Types and Market Share

Fifty-four percent of school districts that contract with FSMCs use on of the four national FSMCs: ARA, Marriott, Canteen, and Service America. Smaller, regional FSMCs hold 43 percent of contracts, while FSMCs that operate in only one school district hold the remaining 3 percent of contracts (See Table 3-2). Although there are no States with a majority of one-contract FSMCs, there are States wherein regional or national FSMCs hold a sizeable majority of contracts. Table 3-3 shows market share for selected States. Some States, such as New Jersey, have a large number of regional FSMC contracts relative to the total number of contracts, while contracts in some States, such as Michigan and Texas, are almost entirely held by large FSMCs.

In States with a high percentage of national FSMC contracts, one contractor usually has a large majority of the contracts. For example, in California, Oregon, and Washington, Marriott is the predominant FSMC contractor. In Texas, ARA has most FSMC contracts, while in Michigan, the most common contractor is Canteen. In these States, market share held by the predominant FSMC is extremely high. This fact is reinforced in Exhibit 3-3, which shows the percent of contracts held by the largest FSMCs in selected States. The chart for each state shows the percent of FSMC contracts in the State held by each FSMC. For example, in Texas where there are 5 FSMCs under contract to school districts, 78 percent of the contracts are held by the single largest FSMC in the State. In contrast, of the 14 FSMCs that operate in New York, only one contractor holds more than 20 percent of the contracts.

Table 3-2: Size of FSMCs Providing Food Service to School Districts in School Year 1990-91

Size of FSMC	Number of Contracts	Percent of Contracts
Large National	486	53.7%
Regional	390	43.1%
FSMC with one Contract	29	3.2%
TOTAL	905	100.0%

Source: State Child Nutrition Agencies

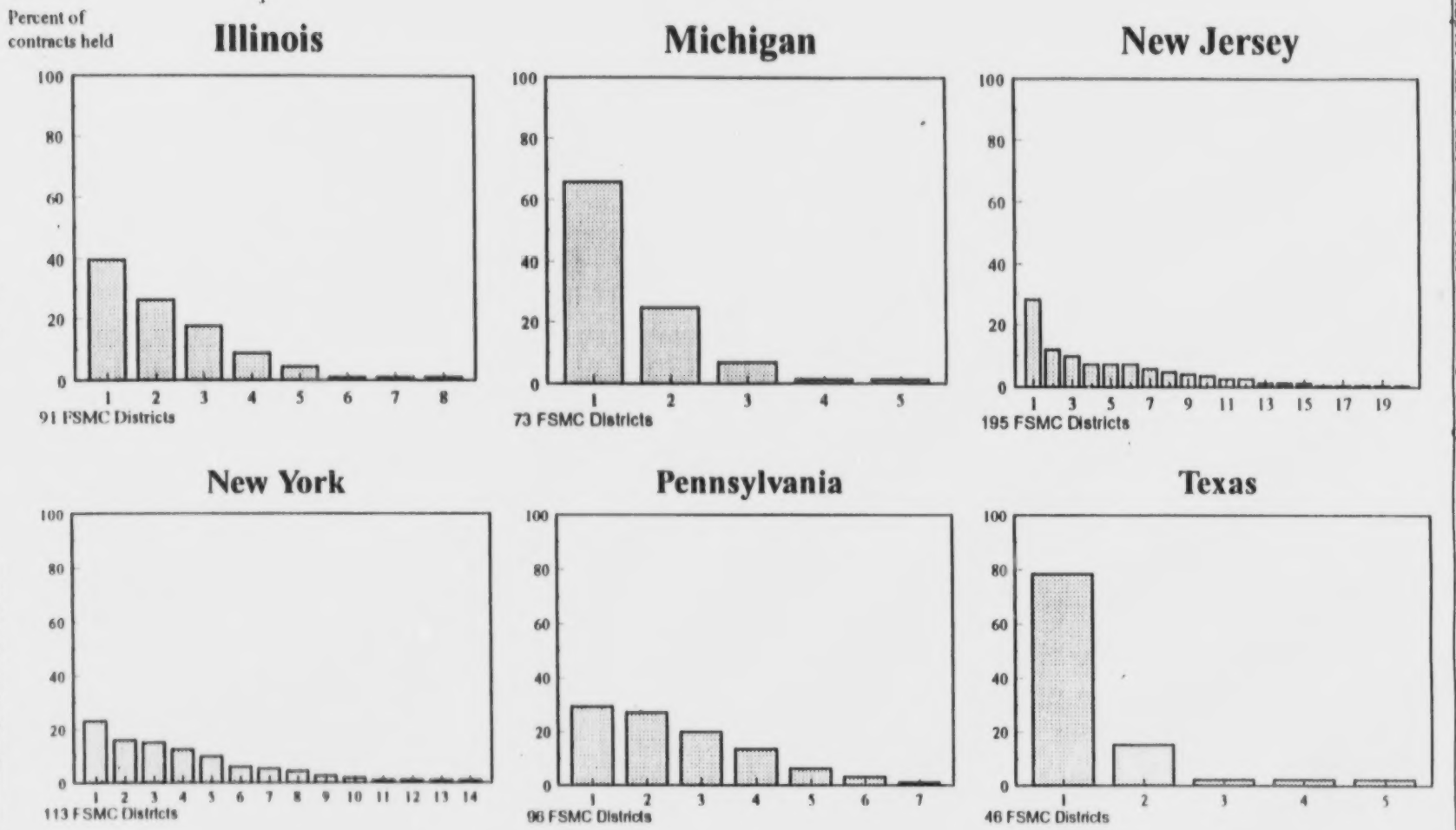
Table 3-3: Number of Contracts by FSMC Size in Selected States

State	Large FSMCs	Percent	Regional FSMCs	Percent	Single FSMCs	Percent
Arizona	3	21%	**10**	**72%**	1	7%
California	**24**	**96%**	0	0%	1	4%
Illinois	68	75%	21	23%	2	2%
Michigan	**71**	**98%**	1	1%	1	1%
Minnesota	3	9%	**31**	**88%**	1	3%
New Jersey	43	22%	**149**	**76%**	3	2%
New York	49	43%	61	54%	3	3%
Texas	**44**	**96%**	1	2%	1	2%
Wisconsin	6	33%	**11**	**61%**	1	6%

Source: State Child Nutrition Agencies

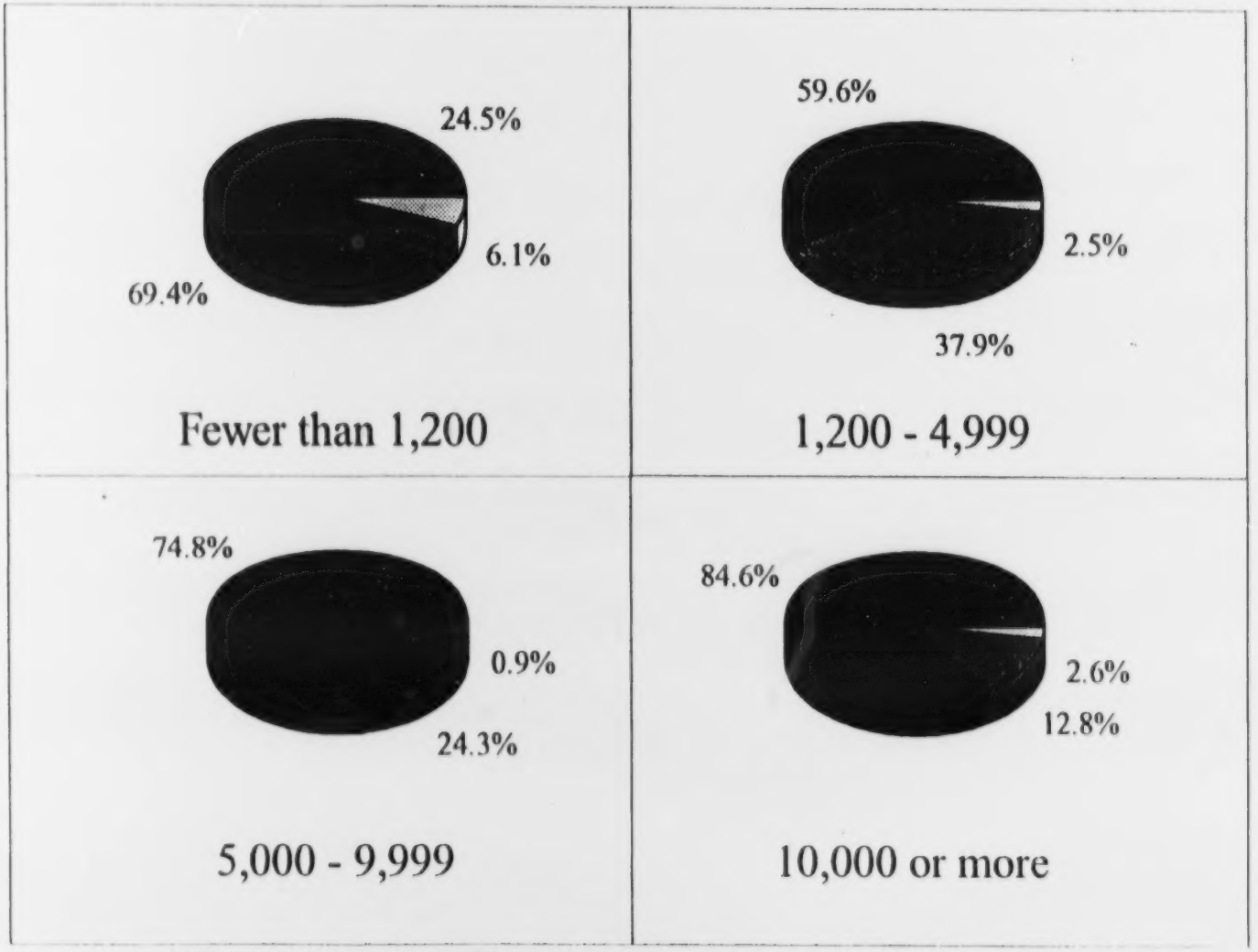
As district enrollment increases, there is a trend towards use of larger FSMCs. Exhibit 3-4 shows that in districts with fewer than 1,200 students enrolled, nearly 25 percent of contracts are with national FSMCs. This percentage increased to about 85 percent in districts with enrollments of 10,000 students or more.

Market Share for Each FSMC in Selected States



Source: State Child Nutrition Agencies

Size of FSMC by District Enrollment



Source: State Child Nutrition Agencies

Exhibit 3-4

Overview

Contracts between school districts and FSMCs provide the basis for successful and appropriate oversight by the school district in meeting its need to provide meal service that conforms with USDA requirements and to do so in a cost effective manner. Contracts were examined to determine the extent to which key management practices were in place and language about performance was provided as a basis for the contract.

Incorporation of Federal Regulations

The Code of Federal Regulations provides rules which school districts must observe if they are to participate in NSLP, SBP, and other meal programs. These rules are fairly specific with respect to the roles and responsibilities of school districts that chose to contract for food service management. Practically all contracts (95.5 percent) minimally state in varying ways that the FSMC must perform in accordance with Federal regulations. Among these contracts, 83.8 percent specifically site Child Nutrition Program regulations; the remainder contain a nonspecific reference to "Federal regulations". Incorporation of program regulations, (e.g., stating that the FSMC is to comply with the regulations), provides a common basis for performance by the FSMC. It does not, however relieve a school district from its need to monitor performance and conformance with program regulations, and to retain active responsibility for key aspects of the program.

State Regulations

Table 4-1, summarizes the prevalence of references to State regulations. First, almost 92 percent of all contracts contain some reference to applicable State regulations. Included are procurement requirements and requirements associated with child nutrition programs. To illustrate, New Jersey (and several other States) require that an addendum summarizing Federal and State requirements be included in any contract for food service management.

Free and Reduced-Price Meal Policy

Providing free and reduced-price meals permits a school district to contribute significantly to the nutritional needs of children from families with low incomes. FNS reimburses school districts at higher rates for these meals than for full price meals. Finally, the provision of free and reduced-price meals involves application and benefit certification procedures that are subject to State and Federal

Table 4-1: Contracts that Specify Adherence to State Regulations

	All Contracts
FSMC must conform to State regulations	91.9%
Contract does not state that FSMC must conform to State regulations	8.1%
TOTAL	100.0%

oversight. While school districts are expected to be responsible for the application processing, FSMCs are often responsible for meal related aspects including accurate meal counts and use of procedures that prevent overt identification of free and reduced-price eligible students. It is therefore appropriate for this area to be addressed in contracts. As shown in Table 4-2, 83.8 percent of all contracts do include language requiring the FSMC to comply with the school district's free and reduced-price meal policies. Approximately 68 percent of all contracts include language assigning responsibility for free and reduced-price meal application verification and approval. In most instances (92 percent) the school district has responsibility for this activity. For the remaining sizable number of contracts that do not contain clear statements on this issue, it is not possible to affirm that the school districts retain control over free and reduced-price meal policy, eligibility determination and benefit delivery,

Table 4-2: Contracts that Specify Adherence to Free and Reduced Price Meal Policy

	All Contracts
Contract specifies FSMC must adhere to policy	83.8%
Contract does not state that FSMC must adhere to F/RP policy	16.2%
TOTAL	100.0%

Control of Meal Prices

Another area where school districts are likely to exert control is in the setting of meal prices. Meal and a la carte prices should be affordable and consistent with overall school district policy. Table 4-3, indicates that 82.4 percent of all contracts state that the school district has final authority over meal prices. In 8 percent of all contracts, authority is shared by the school district and the FSMC. The contracts do not specify the nature of sharing -- e.g., whether or not the FSMC provides input or recommendations. It is noteworthy that 9.6 percent of contracts fail to identify who has authority to determine meal prices.

It is expected that school districts will retain control over prices and that some formal means for changing prices should be in place. As indicated in Table 4-4, only 7.4 percent of contracts have language addressing price changes. In those few instances where there is language on meal price changes, two different types of language were found: prices can change without Board approval; and, ceilings placed on prices charged to students. The first is not consistent with a school districts responsibility to retain control over prices. However, it is important to reiterate that very few contracts contained this language.

Ownership and Control of Donated Commodities

USDA donated entitlement and bonus commodities offset the cost to districts of providing school meals. School districts are expected to retain control over the use of donated commodities and

Table 4-3: Contracts that Specify Final Determinant of School Lunch Prices

Final determinant:	All Contracts
District or School Board	82.4%
Shared	8.0%
Not specified	9.6%
TOTAL	100.0%

Table 4–4: Provision for Changing Prices Charged for Meals During the School Year

	Percent of Contracts
Prices may change during the year	7.4%
No provision for price change	92.6%
TOTAL	100.0%
Additional provisions for price change:	
Prices may change without Board approval	1.8%
Ceiling placed on prices charged during school year	1.0%

ensure that they are used for program purposes. Contracts were generally found to address two areas: ownership and responsibility for commodity acquisition and processing. Table 4-5 summarizes ownership of commodities. Overall, 86.4 percent of contracts state who owns commodities. The remaining 13.6 percent of contracts do not address this issue. Of interest is that a large proportion of contracts -- 62.9 percent overall, or 72.8 percent of all contracts that address commodities ownership -- state that the FSMC, not the school district, controls the donated commodities. While this may be an efficient arrangement, that is, food service professionals employed by the FSMC plan, order, take delivery of, store and use donated commodities, contracts do not generally provide explicit language with respect to the retention of control over use by the school district. When there is language on this issue, it is a simple restatement of the FNS regulations, but does not define the specific measures (e.g., inventory, review of order and delivery documents, observation of meal preparation) that a school district can take to ensure compliance.

A second aspect of donated commodities is responsibility for acquisition and processing. As shown in Table 4-6, 65.6 percent of all contracts address commodity acquisition and processing to some degree; the remainder do not. When contracts are examined

Table 4–5: Ownership of Donated Commodities

	All Contracts
FSMC will have title to commodities	62.9%
District will have title to commodities	23.5%
Not specified in contract	13.6%
TOTAL	100.0%

Table 4–6: Responsibility for Commodity Acquisition and Processing

Level of specificity in contract:	Percent of Contracts
Some responsibilities outlined in contract	62.5%
No responsibilities outlined in contract	34.4%
Responsibilities alluded to in contract	3.1%

FSMC is responsible for services:	Percent of Contracts
Storage and inventory	54.4%
Ordering and acquisition	37.6%
Processing	29.6%

to determine who is responsible for specific activities such as storage, ordering, and processing, among all contracts the responsibility appears to be shared. If the analysis focuses only on contracts that do address commodity acquisition and processing, 83 percent assign responsibility for storage and inventory to the FSMC, 57 percent assign responsibility for ordering and acquisition to the FSMC, and 45 percent assign responsibility for processing to the FSMC. However, the overarching point is that contracts do not generally provide much specificity about the use and control of commodities and suggest that school districts are assigning control and responsibility to the FSMC. This raises questions about accountability for donated commodities that resides with school districts. Regulations clearly state that school districts can not delegate to FSMCs responsibility for ensuring that donated commodities are fully used to the benefit of the school food service.

Use of Advisory Group

Program regulations require that school districts use an advisory group made up of students, parents and faculty to obtain guidance on various aspects of a school district's food services. The regulations also state that responsibility for the advisory committee can not be delegated to the FSMC. As indicated in Table 4-7, most contracts, 90 percent require that the FSMC establish an advisory group and 3.5 percent require that the FSMC work with an existing advisory group. Most contracts specify membership to include students, parents, and teachers which is consistent with program regulations. Thus, this aspect of meal program management--providing a mechanism for responsiveness to student and school needs--is addressed in contracts. The contracts do not specify who actually controls the advisory group or whether the FSMC is limited to providing administrative support.

Table 4-7: Use of Food Service Advisory Committee

Type of committee:	Percent of Contracts
FSMC must establish and use committee	90.0%
FSMC must use existing committee	3.5%
Advisory committee not mentioned	6.5%
TOTAL	100.0%

Contract identified advisory committee membership:	Percent of Contracts
Students	90.2%
Parents	87.6%
Teachers/faculty	87.1%
FSMC site manager or representative	14.9%
Not specified	2.5%
Business manager (or designee)	1.6%
Non-FSMC employees of district	1.1%

Average number of member types cited in contract: 3

Note: Multiple responses possible.

Food Service Performance Parameters

Most of the points already raised in this section provide the basis for the school district to guide and provide oversight of the FSMC in the provision of meal services. In addition, it is expected that contracts (or associated documents such as the RFP or bid specification) would also provide both specific and general information about the scope of services to be provided. Table 4-8 summarizes the types of information contained in contracts that may be used to define performance parameters or make food service assumptions. While most contracts (96.2 percent) provide some parameters, the types summarized in the table represent what was found across the full sample of contracts. On average, five items from this list were specified in a contract.

Most often specified were numbers of buildings, meal prices, numbers of students, available meal preparation facilities, and number of meal service days expected for the school year. However, there is no specific pattern evident. Surprisingly, fewer than three percent of contracts contain meal count data (typically prior year totals for reimbursed meals, a la carte service, adult meals) which should be of value to the FSMC when it prices the contract. It is quite possible that information of this type is presented as part of the bid specifications or RFP that a school district publishes, or is determined by a FSMC when it markets its services to a school district or conducts a site survey. Contracts do not provide insights into these possibilities.

Table 4-8: Performance Parameters and Food Service Assumptions Contained in Contract Documents

	Percent of Contracts
Performance-parameters:	
Number of school buildings	67.4%
Meal prices	50.2%
Number of students available for lunch	40.6%
Meal preparation facilities described	40.4%
Number of service days	38.1%
Quantities of commodities available	27.8%
Federal/State reimbursement rates	26.8%
Meal service hours	23.2%
Food service and serving methods	19.0%
Number of meal service periods	6.8%
Commodity usage	3.0%
Estimated meal counts	2.8%
Assumptions:	
Employee benefits covered or provided for	25.1%
Legislation and regulations	24.5%
Minimum wage rates	21.2%
Wages and pay schedules	15.0%
District equipment responsibilities	7.2%
Unscheduled meal service events	3.3%
CPI adjustments	2.1%
No assumptions/performance parameters	3.8%

Average number of assumptions/parameters identified in contracts: 5.

Note: These assumptions were either stated explicitly or alluded to in the contract document.
Note: Multiple responses possible.

Overview

This section describes the range of services covered in contracts between school districts and food service management companies (FSMCs). Considered here are the types of meals provided by the FSMC and the division of responsibility for the various activities that define meal services such as food purchasing and storage, meal preparation, and other related activities. As might be expected, the contracts designate the FSMC as having primary responsibility for the majority of food acquisition, storage, preparation, and service activities related to school meal programs.

Types of Meals that FSMCs Provide

Food Service Management Companies tend to concentrate on providing lunch, breakfast, and special event meals. Other meal programs such as child care are rarely specified in the contract. Table 5-1 summarizes the types of meals specified in contracts. On average, two meal types were specified in contracts. Eight percent of the contracts fail to specify the types of meals that the school district is contracting out. While it is possible that the meals to be provided by the FSMC were specified in another document such as an request for proposals or bid specifications, this fact was not referenced in the contract. This is a fundamental requirement that should be described in contracts since it defines a significant portion of the services to be provided by the FSMC.

Table 5-1: Meal Services Provided by the FSMC

FSMC provided meals:	Percent of Contracts
Lunch	86.7%
Special event meals	62.8%
Breakfast	42.8%
Dinner	1.0%
Child care food program	0.9%
No reference to meal services	8.1%

Average number of services provided by contract: 2

Note: Multiple responses possible.

School districts also may sell foods that are primarily intended to generate revenue, such as snacks and drinks sold a la carte or through vending machines. The types of foods offered can vary widely. These foods may either supplement or supplant those provide by the pattern meal. There has been some concern in the school food service community that many a la carte and vending machine offerings are of lower nutritional value than the pattern meals. For this reason, a school district interested in controlling the nutritional integrity of foods offered would want to retain authority over foods made available by the FSMC that are in addition to the pattern meal. The review indicates that about half of the contracts specifically designate the FSMC as having approval authority over foods offered by the school food service, and half do not (Table 5-2).

Responsibility for Meal Related Services

In addition to specifying the types of meals that the FSMC is to provide, contracts should designate who is specifically responsible for a range of associated services such as cafeteria operations, verification and approval of free and reduced price meal applications, meal ticket sales, and food purchasing and storage. Table 5-3 provides two types of information about these services. The first is the level of specificity in contracts about services. About 81 percent of all contracts identify who is responsible for providing various services. However, the level of specificity varies. That is, some contracts provide detailed lists while others only identify key services. Only 16.8 percent of contracts fail to define responsibility for various meal service activities. Most often, it is the FSMC that is responsible for meal services. However, school districts are most often responsible for processing free and reduced-price applications. FSMC contracts address this responsibility in 67.6 percent of cases. Slightly fewer contracts, 64.7 percent, cite special function meal service including catering, which, like lunch and breakfast service, is most likely to be the responsibility of the FSMC.

Fewer than half of the contracts cited meal ticket sales (in the elementary or the secondary cafeterias) and food delivery to the serving sites. Of interest is that when ticket sales is cited, it is most likely to be the FSMC that has the responsibility.

When identified in a contract, food purchasing is primarily an FSMC responsibility. In contrast, menu planning is primarily a responsibility shared by the school district and the FSMC (77% of contracts), when cited.

Table 5-2: Conditions on Sale of Food and Beverages Other than Those Served in School Nutrition Programs

	Percent
Contract states FSMC may sell only food and beverages authorized by the district	49.3%
Contract does not state the FSMC must sell only foods and beverages authorized by the district	50.7%
TOTAL	100.0%

Table 5-3: Responsibility for Meal Services

	Percent of Contracts
Level of specificity in contract:	
Some responsibilities outlined in contract	80.9%
No responsibilities outlined in contract	16.8%
Alluded to in contract	2.3%

	FSMC Responsibility	District Responsibility	Shared Responsibility	No Mention of Responsibility
Responsibility for services:				
Preparing and serving meals	79.1%	0.0%	2.8%	18.1%
Meal ticket sales	39.7%	4.6%	0.3%	55.4%
Food delivery to serving sites	13.8%	24.2%	4.6%	57.4%
Service at special functions	58.2%	1.9%	4.6%	35.3%
Food purchasing	77.8%	4.2%	0.9%	17.1%
Menu planning	5.5%	0.0%	77.0%	17.4%
Processing/approval of free/reduced price meal applications	2.3%	63.4%	1.9%	32.4%
Menu printing/distribution	17.0%	5.1%	0.0%	78.0%

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Purchasing requirements may provide an important method for controlling operating costs as well as for obtaining food that conforms with applicable Federal and State guidelines. One of the perceived benefits of contracting with a FSMC for a district is participation in large-scale purchasing where economies of scale may be achieved. Some of the ways that purchasing can be controlled include limits on sources, use of product specifications, and product testing.

Over 42 percent of all contracts do not address procurement policies and practices to be followed by the FSMC (Table 5-4). When contracts do cite procurement policies and practices, they are most likely to be:

- The FSMC is permitted to purchase from subsidiaries (26.1% of all contracts);
- The cost of products is the sole determinant for purchase (e.g., least price) (20.3% of all contracts);
- FSMCs must pass through trade discounts to the school district (22.4% of all contracts); and,
- FSMCs must give preference to local purveyors or purveyors that the school district has been using in the past (18.4 and 14.7% respectively, of all contracts).

Seldom cited are the authority of the parent local government (e.g., city or county government) or State laws.

School districts are expected to adhere to a variety of food purchasing specifications. FSMC contracts were examined to determine whether they addressed three standards: applicability of USDA major ingredient specifications, use of Child Nutrition labeling, and applicability of USDA standards about the use of texturized vegetable protein fillers and extenders. As summarized in Table 5-5, these or other food quality standards were addressed in fewer than half of the contracts. Specifically, the most often cited requirement -- that food products conform to USDA major ingredient specifications -- was cited in only 30.2 percent of contracts.

An important adjunct to food product specifications is food product testing by the school district. Testing could address portion sizes, food temperature, and/or the ingredients of food products obtained or prepared by the FSMC. Testing is important because

Table 5–4: Food Purchasing/Procurement Requirement Terms

	Percent of Contracts
Purchasing requirements:	
FSMC allowed to purchase from subsidiaries	26.1%
Cost is sole determinant	20.3%
Practice reasonable economics	11.3%
Competitive bidding	1.7%
Preference given to:	
Local vendors	18.4%
Existing vendors	14.7%
Small/minority vendors	1.0%
In-State vendors	0.1%
Government vendors/sources	0.1%
General requirements:	
FSMC must take pass through discounts to district	22.4%
Municipal laws apply to procurement	2.2%
District purchases all food	1.9%
Bidding with pre-approved specifications	1.0%
FSMC advises on all food purchases	1.0%
Vendors acceptable to district must be used	0.9%
State laws apply to procurement	0.2%
No requirements specified	42.4%
Average number of purchasing terms identified in contracts: 2	

Note: Multiple responses possible.

Table 5-5: Types of Food Product Specifications Contained in Contracts

	Percent of Contracts
Products must meet USDA major ingredient specifications	30.2%
Fillers and extenders must conform to USDA specifications	15.4%
Food must have CN labeling	1.2%

regulations state that no payment is to be made for meals that are spoiled or do not meet specifications and requirements of the contract. Eighty-five percent of all contracts address food testing and the majority of those contracts specify that a penalty for noncompliance with specifications can be assessed against the FSMC. Table 5-6 summarizes this information.

Food Storage and Inventory

Table 5-7 summarizes the extent to which food storage and inventory requirements are addressed in contracts. About 69 percent of the contracts contain language that addresses the particulars of food storage and inventory and the responsible party. Two requirements were in evidence in between 42 and 56 percent of the contracts:

- FSMCs were responsible for food storage (48.3%) and inventory of an unspecified nature (46.3%);
- FSMCs and school districts shared responsibility for conducting the initial (start of contract) inventory (49%) and conducting the final (end of year) inventory (36.6%).

Nutrition Education and Community Services

In support of the delivery of meals, nutrition education and other non-meal services such as meetings with students and faculty independent of the advisory panel may be provided. As summarized in Table 5-8, only 34.3 percent of FSMC contracts specifically address these services, and when they do, the focus is upon nutrition education. Moreover, when addressed, school districts and the FSMC share responsibility for nutrition education. Based on the contracts alone, nutrition education is not accorded a high priority, nor is it something that FSMCs are expected to lead.

Table 5–6: Testing of Portion Sizes, Food Temperatures, and Food Content

	Percent of Contracts
Product Testing:	
Not addressed	14.9%
Yes: Penalty for noncompliance	54.7%
Yes: Noncompliance penalty not mentioned	30.4%
TOTAL	100.0%

Table 5–7: Responsibility for Food Storage and Inventory

	Percent of Contracts
Level of specificity in contract:	
Some responsibilities outlined in contract	68.8%
No responsibilities outlined in contract	30.9%
Responsibilities alluded to in contract	0.3%

	FSMC Responsibility	District Responsibility	Shared Responsibility	No Mention of Responsibility
Responsibility for service:				
Food storage	48.3%	6.7%	1.0%	44.0%
Conduct initial inventory	2.7%	0.1%	49.0%	48.1%
Conduct final inventory	7.3%	0.1%	36.6%	56.0%
Periodic audit of inventory	1.2%	2.1%	0.1%	96.6%
Unspecified reference to inventory	46.3%	0.9%	0.9%	52.0%

Table 5-8: Responsibility for Nutrition Education and Community Services

	Percent of Contracts
Level of specificity in contract:	
Some responsibilities outlined in contract	34.3%
No responsibilities outlined in contract	64.7%
Responsibilities alluded to in contract	1.0%

	FSMC Responsibility	District Responsibility	Shared Responsibility	No Mention of Responsibility
Responsibility for services:				
Nutrition education	0.0%	0.0%	39.0%	61.0%
Communications with students, parents, teachers	3.8%	1.2%	1.2%	93.9%
Community activities	5.8%	0.0%	0.3%	93.9%
Regular meetings with students and facult	4.6%	0.0%	0.1%	95.3%

Overview

Contracts between school districts and food service management companies (FSMCs) provide the basis for payments and management of the business relationship. This section describes the range of financial terms and conditions of FSMC contacts. Considered here are fee structures, cost controls, and financial management. The issue of bid structure, while of great importance, is not addressed here since information on this process is not part of the contract files found to be typically maintained by State Child Nutrition Agencies.

Fee Structures

Federal program regulations permit two types of payment or fee structures in school district contracts with FSMCs: a fixed price or fee, and cost plus a fixed fee. Fixed price fees take the form of a unit charge or cost, where the unit may be per meal or per time period, typically a year. Under a fixed price structure for example, a FSMC might charge $1.50 per meal or $50,000 per year. In each instance the fee charged is expected to cover all operating and administrative costs with no additional charges to the school district. In contrast, a cost reimbursement plus fee contract permits the FSMC to pass all food service operating costs through to the school district and charge an additional fixed or flat fee that covers management and administrative costs. The fee is often described in different ways. Some contracts refer to it as a service fee, others a management fee, and still others an administrative fee. Moreover, there are instances where a cost plus fixed fee contract will have multiple fees. There may be a per meal and an annual fee. Also one fee might be called an administrative fee and another a management or service fee. While ultimately the cost reimbursement plus fixed fee structure is simply the billing of operating costs to the school district along with a additional amount intended to compensate for various indirect costs incurred by the FSMC, the actual form of the fee(s) is often quite complex.

The analysis of contracts provides some important insights into fee structure. The majority (92 percent) of all contracts do identify and describe--in varying degrees--the fee structure to be observed and the terms and conditions affecting payment by the school district to the FSMC. Table 6-1 summarizes the types of payment and fee structures set forth in contracts with FSMCs. Overall, 72 percent of the contracts specify a cost plus fixed fee payment structure and 20 percent a fixed fee payment structure. Among the cost reimbursable contracts, 57 percent provide for an annual fee,

Table 6-1: Payment Structure Combinations Commonly used in FSMC Contracts

	Percent of category	Percent of all contracts		
Contracts that allow the FSMC to be reimbursed for direct costs				
Per meal fee only	19.0%	13.7%		
Yearly fee only	56.8%	41.0%		
Both per meal and annual fee	24.2%	17.5%		
Total	100.0%		Total	72.2%
Contracts that allow the FSMC to be reimbursed at a fixed rate				
Fixed per meal fee only:	72.2%	14.4%		
Fixed yearly fee only:	27.8%	5.5%		
Total	100.0%		Total	19.9%
No payment method specified:		7.9%	Total	7.9%
TOTAL				100.0%

19 percent provide for a per meal fee,[1] and 24 percent provide for both a per meal and a per year or annual fee in addition to the reimbursed operating cost. Among fixed price (fee) contracts, 72 percent are per meal and 28 percent are per year.

The per meal fee that a FSMC earns will vary as a function of meals served whereas the per year (annual) fee remains fixed and is not subject to changes in meal service. A per meal fee might be expected to act as an incentive to increase the number of school food service meals sold. An annual fee is a more conservative fee structure since it is not affected by changes in the number of meals served.

Table 6-2 presents the different fee structures relative to the size of a school district. The table provides information on the lowest

[1] Meals in the context of a per meal fee typically include all meals reimbursable under NSLP, adult meals, and meal equivalents for a la carte sales.

Table 6-2: Range of Fee Payments from Districts to FSMCs by Enrollment

	Percent of Contracts	Amount of Fee		
		Highest	Median	Lowest
Districts with 10,000 or more students				
Per meal fee with direct cost reimbursement	2.0%	$0.088	$0.043	$0.018
Fixed per meal fee	0.0%			
Annual fee with direct cost reimbursement	1.1%	$200,000	$62,000	$30,000
Fixed annual fee	0.0%			
Both per meal and annual fees				
Annual:	1.1%	$100,224	$31,793	$4,750
Per meal:	1.1%	$0.143	$0.031	$0.007
Districts with 5,000 to 9,999 students				
Per meal fee with direct cost reimbursement	4.0%	$0.158	$0.067	$0.042
Fixed per meal fee	0.9%	$1.500	$1.500	$1.500
Annual fee with direct cost reimbursement	5.2%	$63,600	$42,500	$8,941
Fixed annual fee	0.0%			
Both per meal and annual fees				
Annual:	1.7%	$15,000	$10,310	$5,619
Per meal:	1.7%	$0.070	$0.048	$0.025
Districts with 1,200 to 4,999 students				
Per meal fee with direct cost reimbursement	5.1%	$0.162	$0.110	$0.070
Fixed per meal fee	11.6%	$1.620	$1.175	$0.974
Annual fee with direct cost reimbursement	19.3%	$55,075	$21,250	$1,250
Fixed annual fee	2.0%	$52,620	$33,250	$13,880
Both per meal and annual fees				
Annual:	12.7%	$40,000	$12,000	$3,440
Per meal:	12.7%	$0.110	$0.020	$0.010
Districts with less than 1,200 students				
Per meal fee with direct cost reimbursement	0.7%	$0.155	$0.155	$0.155
Fixed per meal fee	1.9%	$1.088	$1.075	$1.063
Annual fee with direct cost reimbursement	11.2%	$14,850	$9,800	$3,450
Fixed annual fee	1.0%	$29,727	$29,727	$29,727
Both per meal and annual fees				
Annual:	0.9%	$18,060	$18,060	$18,060
Per meal:	0.9%	$0.010	$0.010	$0.010
Private schools (less than 1,200 students)				
Per meal fee with direct cost reimbursement	0.0%			
Fixed per meal fee	0.0%			
Annual fee with direct cost reimbursement	4.2%	$227,988	$13,880	$7,000
Fixed annual fee	1.8%	$119,669	$103,574	$87,480
Both per meal and annual fees	0.0%			
Fee amount not specified	3.7%			
No payment method or fee specified	7.9%			
TOTAL	100.0%			

and highest fees in each group as well as the median. The enrollment size of a school district is associated with the type of payment structure found in contracts. In examining the median per meal fee associated with cost reimbursable contracts, per meal fees increase as school district size decreases. The median per meal fee for large school districts is 4.3 cents as compared to 15.5 cents for small school districts. In contrast, the median annual fee associated with cost reimbursable contracts decreases as school district size decreases. The median annual fee for large school district is $62,000 as compared to $9,800 for small school districts. In each case, the difference is reflective of the volume of meals served.

Another observation is that fixed per meal fees are not present in contracts between school districts with enrollments in excess of 5,000 students. Fixed per meal fees are only used in smaller school districts. While the contracts do not provide reasons for this, an FSMC is less likely to encounter significant operating cost increases in smaller school districts.

Private schools are treated as a separate category since their fees tend to be much greater than those found for public schools. Since private schools fall within the small school district strata, their high values would distort the values that characterize the smaller school districts that use FSMCs.

A La Carte Conversion. Another component of the overall payment structure is the way that a la carte sales are counted as meals and valued. Because school districts are expected to monitor all meal valuation practices, contracts were examined to determine if they define a la carte conversion factors. A la carte sales provide an important source of income for meal programs. However, a la carte sales are not counted in the same way that pattern meals are counted. Rather, the total dollar value of a la carte sales is tabulated. To obtain reimbursement for the value of those meals, school districts and FSMCs agree upon an a la carte equivalent. The average equivalent is $1.50, and ranges in value from $1.00 to $2.00. Thus, if the a la carte sales for a month is $150 and the conversion factor is $1.50, the FSMC would claim 100 a la carte meal equivalents at the contract-specified per meal fee. An a la carte conversion factor is only used when there is a per-meal fee payment structure.

As indicated in Table 6-3, 43 percent of contracts between school districts and FSMCs provide an a la carte conversion factor.

Table 6-3: Ala Carte Conversion Factor

	Percent of Contracts
Conversion factor identified in contract	43.0%
No conversion factor identified in contract	57.0%
TOTAL	100.0%

However, among contracts providing an a la carte conversion factor, 84 percent use some form of per meal reimbursement.

Meal Program Cost Controls

This section examines some of the cost and reporting controls identified in contracts between school districts and FSMCs. One strategy is the use of a cap or ceiling on payments to FSMCs. Only a very few contracts provide for a cap, about two percent.

Program Cost Accounting and Reporting. *Table 6-4 summarizes the cost accounting and cost reporting requirements in contracts. Approximately 81 percent of all contracts contain accounting requirements that the FSMC is expected to meet. Among the types of reports present in contracts, three were most often identified: periodic summary reports on operations which may include aggregate meal count data along with monthly profit and loss or operating cost reports; daily meal counts in support of NSLP meal claims; and end of year (financial) statements.* Contracts do not provide reporting formats nor do they uniformly specify the types of information that an FSMC is expected to provide. They do not specify who is responsible for preparing reimbursement claims submitted to the State Agency for Federal (and State in those States that provide funding for school meal programs) payments, nor do they specify the records that must be kept in support of those claims. Specifying the types of reports and information items required of an FSMC provides a school district with one important means for monitoring performance.

Control of Food Service Equipment Purchases. Food service equipment represents a major capital investment for school districts. If an FSMC adds or replaces equipment without prior school district approval, the school district could be placed in financial risk. *Table 6-5 summarizes who is designated in the contract as having final approval authority for the purchase of*

Table 6-4: Program Cost Accounting and Reporting Services and Costs

	Percent of Contracts
Level of specificity in contract:	
Some responsibilities outlined in contract	78.5%
No responsibilities outlined in contract	19.5%
Responsibilities alluded to in contract	2.0%

Types of reports:	FSMC Responsibility	District Responsibility	Shared Responsibility	No Mention of Responsibility
Periodic reports on operations	71.9%	2.2%	0.0%	25.9%
Daily meal counts	15.9%	2.0%	0.0%	82.2%
Periodic meal count audits	7.7%	1.6%	0.0%	90.7%
Record/control audits	3.0%	4.9%	0.0%	92.2%
Year end statement	13.9%	0.0%	0.0%	86.1%
Maintenance of records	4.2%	0.0%	0.0%	95.8%
Preparation of Federal, state, and/or district fiscal and management reports	9.8%	2.9%	0.1%	87.4%

Table 6-5: Final Authority for Food Service Equipment Purchase

Organization with final authority:	*Percent of Contracts*
District	67.3%
Both	3.6%
FSMC	1.9%
Not specified in contract	27.2%
TOTAL	100.0%

equipment that would be used in the storage and preparation of school meals. Overall, 72.8 percent of all contracts address this issue. Among those contracts that do specify who has authority over equipment purchases, 67.3 percent state that the school district is the final authority.

Adjustments to Payments. For various reasons, payment terms in a contract might be adjusted in these two situations: during the school year and upon contract renewal. First, during the school year, there may be significant deviations from the assumptions upon which the original payment terms were defined. Program participation may change significantly or donated commodities may not be available in expected quantities or types. As a result, the cost of preparing meals might increase or decrease, depending upon the deviation. Second, upon renewal of a contract, which occurs at the end the base and each option year, there may be a need to re-examine the payment structure in light of operational experiences during the school year.

Contracts were examined to determine how these adjustments might be addressed and the data are summarized in Tables 6-6 and 6-7. With respect to the first type of change -- a mismatch between cost and performance assumptions and actual performance -- only 30.2 percent of contracts contain language permitting the school district and FSMC to examine and presumably renegotiate payment terms.

Table 6-6: Effect of Changed Assumptions on Financial Terms of Contract

	Percent of Contracts
If performance assumptions change during year:	
Financial terms may be changed	30.2%
No mention of change in financial terms	69.8%
TOTAL	100.0%

Table 6-7: Recalculation of Fees on Contract Renewal

Contract allows recalculation based on:	Percent of Contracts
Recalculation allowed for unspecified reasons	31.7%
Inflation	28.1%
Inflation and performance	3.0%
Performance	1.0%
No recalculation clause in contract	36.2%
TOTAL	100.0%

Recalculation of fees upon renewal is addressed in 63.8 percent of all contracts. Most often, the contract simply contains language permitting recalculation. Inflation as a basis for recalculation was cited in 28 percent of contracts. No other reason or basis was cited consistently. Other factors such as unsatisfactory FSMC performance FSMC and inability of the FSMC to meet operating cost targets are not generally stated in contracts.

In addition to payment adjustments based on operations or inflation changes, payment terms can also be changed based on food service quality expectations. The contract review revealed that 88 percent of contracts contain language that permits the school district to adjust or disallow claims when meals are determined to be of unacceptable quality. This is consistent with Federal regulations that specify that no payment is to be made for meals that are spoiled, unwholesome, or do not otherwise meet specifications or contract requirements.

Payments, Security and Reserves

Contracts for food services also contain language about payment of bills and accounts. Table 6-8 summarizes the forms of payment specified in contracts between school districts and FSMCs. In 68.6 percent of the contracts reviewed, the FSMC is responsible for paying the bill and then invoicing the school district for the cost. This is consistent with the dominant payment structure, cost reimbursement with a fixed fee. The other primary form of bill payment is for the FSMC to pay bills directly and then recover

these expenditures as part of the per meal or per year fee. What is not evident in contracts is the degree to which either of these invoicing methods require that the FSMC provide back-up documentation that supports the invoice. Back-up documents would include copies of invoices from vendors and suppliers and proof of payment. Finally, 7 percent of the contracts require the school district to pay vendors directly.

Performance Security. A performance security, or bond, is a method available to a school district to obtain financial recourse in the event that the FSMC defaults on its responsibilities. Table 6-9 summarizes the presence and types of performance securities. About one-third (31.2 percent) of contracts provide for a performance security. When required, the security was often defined as "in a form acceptable to the school district" or is a bond. When specified as a flat amount, the average dollar value was $37,201. When specified as percent of the estimated annual value of the service, the average dollar value was 23.3 percent.

Working Capital Fund. A working capital fund is a requirement that may be placed upon a school district to assure that it has sufficient funding to compensate the FSMC as costs are incurred. Only 11.2 percent of contracts have this requirement.

Table 6–8: Payment of Food Service Bills

	Percent of Contracts
District pays vendors directly	7.0%
FSMC pays vendors and bills district	68.6%
FSMC pays and does not bill district/itemize costs	23.5%
Payment method not mentioned	0.9%
TOTAL	100.0%

Note: Costs include food, materials, and supplies to be used for food service operations.

Table 6–9: Type of Performance Security Specified in Contract

	Percent of Contracts
Required but not defined *	16.2%
Bond	13.1%
Certified check	1.0%
Bond and certified check	0.9%
No performance security	68.8%
TOTAL	100.0%
Average value of performance security:	
Dollars:	$37,201
As a percent of projected annual costs:	23.3%

* Typical language includes "in a form acceptable to the district."

Operating Cost Guarantees and Recovery

The financial goal of any school food service operation is to pay for the program using the revenues generated though sales and reimbursements from Federal (and State) programs, and to minimize or eliminate subsidies from the school district's general fund. A school food service operation operates at a loss when costs exceed program income. Contracts for food services may contain language about guarantees of operating costs and terms for the recovery of costs in excess of program income. Typically, guarantees are in response to a school district's desire to reduce food service operating costs. For example an FSMC may guarantee to balance costs and income or reduce overall costs by some combination of increased revenue from increased participation, a la carte meal sales, and/or reduced operating costs.

A loss occurs when the FSMC fails to achieve targets such as reducing the general fund subsidy for food service or operating a self-supporting meal program. Losses may be carried over into

the following school year or paid for using funds from other school district sources such as the general fund. Alternatively, losses may be recovered from the FSMC by the school district fully or partially.

Guarantees. Table 6-10 summarizes the types of guarantees in a contract. A guarantee of return or break-even for the school district is present in 40.8 percent of all contracts. In contrast, 17.2 percent of all contracts specify that the school district is responsible for some or all losses. Forty-two percent of the contracts do not contain language about guarantees.

Recovery. As indicated in Table 6-11, 47 percent of contracts specify conditions for recovery of losses. There are two primary ways FSMC liability for losses are addressed: the FSMC reimburses the school district for the loss without limit; or it reimburses the school district with limits equal to the management fee or a ceiling. In a few instances, FSMCs are permitted to apply positive income to prior year losses. That is, if costs exceed earnings in one year but in the next year income exceed costs, then the net positive income can be used to offset the prior year's loss. Finally, in 12.5 percent of the contracts, the school district agrees to assume responsibility for costs that exceed income from sales and Federal (and State) reimbursements. In these instances, the FSMC is not responsible for costs that exceed program income.

Table 6–10: Contract Terms Regarding Guarantees on Food Service Costs to District

Presence of a Gain/loss agreement:	Percent of Contracts
Guaranteed return to district	21.7%
District guaranteed to break even	19.1%
District responsible for some or all of losses	17.2%
No gain, lose, break even clause	42.0%
TOTAL	100.0%

Table 6–11: Conditions for Loss Reimbursement

	Percent of Contracts
Contract specifies conditions for loss reimbursement	47.0%
Contract does not specify conditions	53.0%
TOTAL	100.0%

Types of loss reimbursement clauses:	
FSMC reimburses district for loss	20.9%
District pays loss	12.5%
Reimbursement cannot exceed mgmt fee	12.0%
FSMC pays loss up to a ceiling	6.2%
FSMC may recoup losses in later years	5.7%
FSMC/district will agree on deficit recovery	3.8%

Overview

Contracts between school districts and FSMCs address a variety of other issues that define the working relationship between the parties. Considered here are record keeping, facilities management, hiring and personnel practices, and insurance requirements.

Record Requirements

FSMCs are expected to maintain business records such as food and supply bid specifications, purchase orders, invoices, and personnel records that relate to the provision of food services to a school district. Contracts do not describe in detail what those records should be, but do provide general guidance about their availability to school district officials for purposes of inspection or audit.

Records. Table 7-1 summarizes the types of information that FSMCs are expected to maintain. Requirements for record keeping in the contracts fell into two categories: program income, expenditures, and meal counts; and general guidance on record keeping. General guidance is most likely to refer to applicable state requirements. However, 43.9 percent of all contracts did not identify any recordkeeping requirements.

Accessibility. Table 7-2 summarizes contract requirements about school district access to food service information maintained by the FSMC. Virtually all contracts contain language requiring that the FSMC make records available for inspection (90.9%) and also specify the length of time that those records must be available (96.7%). The average number of years that records must be kept is four years, although the contracts are not clear as to when this time frame starts and ends. If this period does not correspond to the maximum allowable period of performance allowed under Federal regulations (e.g,. the base year and four option years), then the ability of a school district, in the event of a dispute over payments or claims, to recover costs following completion of the contract would be impaired.

Facilities Management

Table 7-3 summarizes responsibilities for food service facilities operation and maintenance. Approximately 82 percent of all contracts address this area and specify who is responsible for a variety of activities. In general, when cited, the school district is

Table 7-1: Information that Contracts Require FSMCs to Maintain

	Percent
Specific requirements:	
Program income and expenditures	28.6%
Daily number of lunches served (NSLP and a la carte)	16.4%
Daily F/RP lunches served	14.7%
Lunches served to adults	14.6%
Value of a-la-carte sales	14.6%
Value of donated commodities	1.0%
Amount of milk served	0.1%
General requirements:	
Accordance with State requirements	27.6%
Meet SFA requirements	8.3%
Meet NSLP requirements	3.6%
Accordance with FSMC experience	0.3%
Contracts that do not specify record keeping requirements	43.9%
Average number of record contents requirements specified in contracts: 2	

Note: Multiple responses possible.

responsible for most facilities-related activities including: providing the meal preparation and service facilities, repair and maintenance of equipment, cleaning of the dining areas, trash removal, exterminator services, and repairs. FSMCs are most likely to be responsible for cleaning the food preparation areas.

Table 7-2: Record Keeping Requirements

Availablity of records:	Percent of Contracts
FSMC must make records available for periodic inspections	90.9%
Contract does not specifically address inspections	9.1%
TOTAL	100.0%

Time frame:	Percent of Contracts
Contract specifies length of time records must be kept	96.7%
Contract does not specify length of time records must be kept	3.3%
TOTAL	100.0%

Average number of years records must be kept: 4.

Personnel

Contracts for food services also contain language about personnel issues including hiring practices, management of staff, and employee benefits. Information in contracts about practices and responsibility are summarized below.

District and FSMC Staff. Table 7-4 summarizes hiring and cross-hiring as it is addressed in contracts. Only 3 percent of the

Table 7-3: Responsibility for Facilities Management

	Percent of Contracts
Level of specificity in contract:	
Some responsibilities outlined in contract	81.7%
No responsibilities outlined in contract	16.3%
Responsibilities alluded to in contract	2.0%

	FSMC Responsibility	District Responsibility	Shared Responsibility	No Mention of Responsibility
Responsibility for services:				
Providing facilities for service/operations	1.0%	81.7%	0.8%	16.6%
Repair, maintenance of equipment	1.0%	77.5%	2.9%	18.6%
Cleaning of preparation area	70.7%	5.5%	1.9%	21.8%
Cleaning of dining area floors, etc.	2.0%	57.9%	14.5%	25.6%
Ensuring periodic health inspections	18.9%	31.9%	20.0%	29.2%
Garbage removal from site	1.3%	66.2%	0.0%	32.5%
Cleaning of cafeteria tables	31.5%	32.8%	1.0%	34.7%
Exterminator service	0.0%	65.3%	0.0%	34.7%
Repairs to fixtures	1.0%	60.3%	0.0%	38.7%
Garbage removal from dining area	12.9%	47.3%	0.0%	39.9%
Garbage removal from kitchen	11.7%	48.3%	0.0%	40.0%
Fire extinguishing equipment	0.0%	4.3%	0.0%	95.7%

contracts require that the FSMC hire the school district's food service director as a contract requirement. School district approval of the FSMC's site manager is required in 38.5 percent of all contracts. Approval of the site manager is one way that school districts can exercise control over food service operations. Most contracts do not address the issue of retention or replacement of the food service staff employed by a school district prior to the award of the contract to an FSMC. Based on the contracts, it is not reasonable to support or refute another major argument for using an FSMC -- namely that it is a way for school districts to transfer personnel and benefit costs from the school district to an FSMC and as a result lower food service operating costs.

Table 7-4 also contains information about the issue of cross-hiring. Cross-hiring refers to the hiring by one party to a contract of staff employed by the second party to the contract. Such practices might be of concern, for example, when an FSMC substantially improves food service performance and the school district hires the FSMC site manager rather than renewing the contract. Over half of the contracts address this issue, and most of these prohibit each

Table 7–4: Hiring Practices

	Percent of Contracts
FSMC must hire current food service employees	3.0%
District can approve FSMC site manager	38.5%

Cross hiring:	Percent of Contracts
District cannot hire any FSMC employees	15.1%
FSMC cannot hire any district employees	2.1%
Both practices are prohibited	36.6%
Contract does not address cross-hiring	46.2%
TOTAL	100.0%

party from hiring the other's personnel.

Personnel Management. Personnel management responsibilities are summarized in Table 7-5. About three-fourths of all contracts define responsibility for personnel management in some fashion. In general, FSMCs are responsible for personnel management, even when the staff they are managing are employees of the school districts. Most often identified in contacts are: managing employee and labor relations; personnel development, and hiring and termination of management staff. Contacts are less likely to include non-management staff hiring and firing as a FSMC responsibility.

Employee Benefits. Approximately one-third of contracts (34.9%) define responsibility for employee benefits (Table 7-6). When cited, they are likely to refer to the responsibilities placed upon the FSMC with respect to its own employees. The benefits identified most often in contracts include medical, insurance, retirement, and holidays.

Insurance Requirements

Contracts for food services also contain language about insurance requirements that FSMCs must meet. Table 7-7 summarizes these requirements. Insurance was addressed in 79.1 percent of

Table 7-5: Personnel Management

	All Contracts
Level of specificity in contract:	
Some responsibilities outlined in contract	74.9%
No responsibilities outlined in contract	23.0%
Responsibilities alluded to in contract	2.1%

	FSMC Responsibility	District Responsibility	Shared Responsibility	No Mention of Responsibility
Responsibility for personnel management services				
Managing employee-labor relations	67.1%	0.0%	0.0%	32.9%
Personnel development	60.6%	0.0%	1.0%	38.3%
Hiring/firing of management staff	44.8%	1.0%	1.2%	53.0%
Hiring/firing of non-management staff	32.7%	9.8%	1.7%	55.8%
Training student helpers	17.3%	1.0%	7.1%	74.5%
Admin and technical staff supervision	22.1%	0.0%	1.0%	76.9%
Consulting services	9.3%	0.0%	0.0%	90.7%

Note: Multiple responses are possible.

Table 7-6: Food Service Employee Benefits

	All Contracts
Level of specificity in contract:	
Some responsibilities outlined in contract	34.8%
No responsibilities outlined in contract	65.1%
Responsibilities alluded to in contract	0.1%

	FSMC Responsibility	District Responsibility	Shared Responsibility	No Mention of Responsibility
Responsibility for costs of employee benefits:				
Medical benefits	20.4%	2.0%	2.8%	74.7%
Life insurance benefits	18.0%	2.0%	2.8%	77.1%
Retirement	15.0%	2.0%	1.9%	81.1%
Workman's compensation	12.8%	3.0%	2.0%	82.2%
Paid leave	14.4%	2.0%	0.9%	82.7%
Uniform allowance	10.9%	4.0%	0.0%	85.0%
Bereavement	8.8%	2.0%	0.0%	89.2%
Unemployment security	8.4%	1.0%	1.0%	89.6%
Educational assistance	8.3%	2.0%	0.0%	89.7%
Jury duty	7.9%	2.0%	0.0%	90.0%
Sick leave	6.4%	2.9%	0.0%	90.7%
Premium pay	7.1%	0.0%	0.0%	92.9%
Welfare insurance	5.4%	0.0%	0.0%	94.6%
Employee savings plan	0.1%	2.0%	0.0%	97.8%

Note: Multiple responses are possible.

contracts. An average of three liabilities were identified with comprehensive general liability, workman's compensation, and, vehicle insurance being the most common.

Table 7-7: Types of Insurance Coverage and Liabilities Identified in Contracts

	Percent
Comprehensive general liability	76.7%
Worker's compensation	74.9%
Auto and truck insurance	21.5%
Product, bodily, and property damage	4.9%
Umbrella excess policies	4.7%
Unemployment	4.2%
Contractual liability	1.6%
Public liability	1.2%
Insurance type not specified	1.2%
Property damage	0.9%
Catastrophe liability	0.1%
Surety bond	0.1%
None specified	21.9%
Average number of liabilities for which insurance is required: 3	

Note: Multiple responses possible.

The review of contracts between school districts and food service management companies (FSMCs) provides important insights into the formal business relationships that exist to provide school lunches (primarily) to school children. At a minimum, contracts should delineate clearly the roles and responsibilities of the school district and the FSMC, they should conform to FNS regulations, and they should provide appropriate means whereby the school district retains full control of and accountability for its meal programs. The results of this analysis indicate that contracts between school districts and FSMCs generally meet these expectations, but that there are areas in need of improvement.

Conclusions in this report are limited to the contract and their contents. They should be useful in identifying aspects of contracts that can be strengthened along the lines set forth in FNS guidance issued in October of 1992 on the use of FSMCs. This report and its conclusions do not provide information about the procurement process or actual performance after the contract is signed. However, the contract review is part of a larger study effort that examines the procurement process, FSMC responsibilities, payment terms, accountability, and meal program operating characteristics. For these reasons, the findings of this report must be viewed as tentative.

1. **Contracts between school districts and FSMCs address some, but not all of the basic school nutrition program requirements. Contracts vary considerably in their compliance with regulatory requirements about key school district responsibilities.**

The guidelines recently issued by FNS -- *Contracting with Food Service Management Companies: Guidance for School Food Authorities* -- clearly state the responsibilities that school districts must retain when they contract for food service management. Many of these areas of responsibility have been examined in this report, with others to be addressed in subsequent reports. Table 8-1 summarizes each of the primary responsibilities that FNS requires a school district to retain when contracting. For each area, the percent of contracts that explicitly assign the school district with responsibility has been listed. Contracts in effect for the 1990-91 School Year generally conform with the FNS guidance on retention of responsibilities in the areas of free and reduced price meal policy, meal price setting, control of the program, and

Table 8-1: Overall Level of Conformance of Contracts in Effect in 1990-91 School Year to FNS 1992 Contracting Guidance

FNS Guidance-- School District Areas of Responsibility:	Percent of Contracts Where District Retains Control
NSLP agreement	Not addressed in contracts
Control of accounts	4.9%
Establish meal prices	82.4%
Signing the reimbursement claim form	Not addressed in contracts
Free and reduced price meal program policies	83.8%
Free and reduced meal application process	83.8%
Monitoring meal program	73.0%
Control of quality, extent and nature of food services	76.2%
Title to USDA donated commodities	23.5%
Assuring that donated commodities are used for NSLP meals	14.7%
Forming advisory board	3.5%
Resolution of review and audit findings	90.9%
Maintaining health department certifications	31.9%
Menu for pricing of contracts	Procurement Issue

resolution of review and audit findings. However, these same contracts were less specific about school district control of donated commodities, responsibility for forming an advisory board, and clearly stating that the school district retains control over food service accounts.

The majority of contracts include general requirements that the FSMC comply with FNS child nutrition as well as State regulations. Over 95 percent of contracts include some reference to FNS regulations, most often through specific references to those regulations. Eighty-four percent of contracts state that the FSMC must adhere to the school district's meal policies, and 82 percent state that the school district will determine meal prices. The minority of contracts that do not address these issues directly, either indicate that the school district and FSMC share responsibility, or simply do not address the requirement.

One area where school districts are expected to retain control is the ownership of USDA donated commodities. However, 62.9 percent of contracts state that the FSMC and not the school district has title to the donated commodities. Only 23.5 percent of contracts state specifically that the school district retains control of

donated commodities. Yet FNS regulations do not permit school districts receiving USDA donated commodities to delegate control of those commodities to the FSMC and school districts must ensure that commodities are used exclusively in the district's nonprofit school food service. Whether or not some school districts are, in fact, delegating control to the FSMC, or whether the intent is that the FSMC be responsible for processing and storage of commodities as an agent of the school district, can not be determined solely from the contract document. Thus the question of ownership of donated commodities can not be resolved on the basis of the contract alone; however, the contract language used indicates an area where many contracts could be strengthened.

2. **Contracts between school districts and FSMCs generally conform to USDA regulations on payment structures.**

Two types of payment (fee) structures are documented in contracts: cost reimbursement plus a fixed fee (72.2 percent of all contracts); and a fixed fee for services (19.9 percent of all contracts). Both payment structures are permitted by FNS regulations, and no contracts reviewed had payment structures not conforming to FNS regulations.

Under the first structure, the school district pays all operating costs plus a predetermined management fee. Under the second type, the school district pays a fixed price for services that includes operating costs and a management fee. This fixed price may be per-meal or an annual cost. Within the two payment structures, the actual mechanisms under which a school district compensates an FSMC tend to be complex. A variety of terms are used including, service fees, management fees, and administrative fees. It is not unusual to find combinations of different fees applied annually, on a per meal basis, or both.

In addition to payment terms, approximately 41 percent of contracts between school districts and FSMCs contain language addressing the attainment of operating cost goals and the mechanism for paying costs in excess of those goals. Goals are most often expressed as operating a school district's school meal program within a certain tolerance. When incurred costs exceed the tolerance, the FSMC generally reduces its fee to absorb some or all of the overage. This provides a financial incentive for cost controls. An additional 17.2 percent of contracts state that the school district is responsible for some or all of the costs that

exceed program income. The remaining 42 percent of contracts do not contain cost-related operating goals.

In addition, 88 percent of contracts permit school districts to adjust or disallow payments when meals are determined to be substandard or incomplete.

3. **Many contracts between school districts and FSMCs contain accounting requirements, but provide limited guidance on reporting and accountability.**

FNS regulations require that school districts using FSMCs exercise control over accounts and have overall financial responsibility for their school nutrition programs. Approximately 81 percent of all contracts contain accounting requirements that the FSMC is expected to meet. Three types of reports are most often identified in contracts: periodic summary reports on operations which may include aggregate meal count data along with monthly profit and loss or operating cost reports; daily meal counts in support of NSLP meal claims; and, end of year (financial) statements. Contracts do not provide reporting formats nor do they uniformly specify the types of information that an FSMC is expected to provide. They do not specify who is responsible for preparing reimbursement claims submitted to the State Agency for Federal (and State in those States that provide funding for school meal programs) payments, nor do they specify the records that must be kept in support of those claims. Specifying the types of reports and information items required of an FSMC provides a school district with one important means for monitoring performance. The majority of contracts do require that FSMCs maintain records for an average of four years and that those records be made available to the school district.

4. **Contracts between school districts and FSMCs generally describe the services that FSMCs are expected to provide. However, there is wide variation in the numbers of services to be provided and the detail with which these services are described.**

The contract is the agreement for services between the school district and the FSMC. Overall, 83.2 percent of the contracts describe who is responsible for various meal service functions. The most frequently cited functions are preparing and serving meals, food purchasing, and menu planning. Contracts cite an

average of 4.8 individual meal service functions. The remaining 16.8 percent of contracts do not identify meal service functions nor who is responsible for them.

In the area of food purchasing, 59.6 percent of contracts provide guidelines that the FSMC must follow. The average contract contains two purchasing requirements for this complex area of food service management. Sixty-nine percent of the contracts state who is responsible for food storage -- FSMCs -- and inventory -- a shared responsibility.

These variations in specificity may be the result of incomplete contract files. Approximately 43 percent of the contract files provided by the State agencies contained the contract and supporting information of the type described above. The remainder of the files, at a minimum, contained the contract only. States are only required to maintain a copy of the current contract on file. Thus, the variations noted above may reflect the fact that contracts rely upon bid documents, to describe requirements and responsibilities. However, the contracts reviewed in this study did not refer to bid documents and, as noted above, the language used in the contracts is often ambiguous.

Overview

This section describes in greater detail how contracts and other related documentation between school districts and food service management companies (FSMCs) were collected, reviewed, and prepared for analysis.

Sample Selection

In the Spring of 1991, Price Waterhouse, with the cooperation of each of the State Child Nutrition Agencies constructed a universe of school districts receiving NSLP funding that contract with an FSMC to operate school-based nutrition programs. This effort resulted in the identification of 905 public and private districts with active contracts for the 1990-91 school year. The districts were stratified according to their enrollment and the size of their FSMC. Four classifications of district enrollment were used: less than 1,200 students; 1,200 - 5,000 students, 5,000 - 10,000 students; and 10,000 or more students, which defined the certainty strata. Four classifications of FSMC size were also used: those operating on a national scale; those operating in multiple States; those in one State with more than one contract; and those with only one contract.[1] Once stratified, a sample of 166 districts was selected for the survey of districts using FSMCs.[2] A subsample of 132 out of the 135 districts was drawn.

This was done for the following reasons. First, based prior work with the State Agencies to develop the frame, it was recognized that in many instances a significant burden was likely to be imposed. Second, the sample of 166 districts is intentionally inflated to offset expected losses due to survey nonresponse. For purposes of the contract review, non-response was not expected. The contract review sample of 135 was selected at random and in a manner that preserved the distribution of FSMC districts in each of the stratification cells described above. Subsequently, it was discovered that State agency-provided information about the status of three of the sampled districts was incorrect. For this reason, a

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[1] The first stratifying variable--enrollment size-- is used for estimation purposes. The second stratifying variable is used to maintain proportionate representation among different types of FSMCs.

[2] It was assumed that an 80 percent response rate for the survey could be achieved. Thus, 166 districts were selected, assuming that 135 would respond.

total of 132 contracts were abstracted. The subsample reflected the overall distribution of school districts in the larger sample. Each of the 132 districts selected was assigned a sample weight based on the stratification cell from which it was selected.

Obtaining The Contract Documents

Each State Child Nutrition Agency was sent a list of the districts sampled from that State and was requested to provide any and all contract documents maintained on file at the Agency. Specifically requested were the following documents:

- Invitation to bid or RFP (the two vehicles that a district might use to solicit qualified bidders;
- Signed contract; and,
- Amendments to the contract

As part of the request, a cover sheet for each district was included so that the State Agency could indicate what documents were available or note which documents were not readily available. Most State Agencies were able to respond in a timely manner. Some problems, however, were encountered:

- Approximately one-fourth of the States were unable to provide full documentation -- the contract and the bid document(s) -- for all sampled districts or provided contracts for the incorrect district. It was necessary to work closely with each of the State Agencies to ensure that correct and current contract documents were provided.

- Some States were unable to commit the necessary material and manpower resources to provide contracts. Contractor staff went to the State Agency to obtain the necessary information, or paper was sent to the State Agency for copying the contract documents needed for the review.

The effort concentrated on obtaining contracts from State Agencies for two reasons: State Agencies are required to maintain a copy of contract documents; and, there was concern that school districts not be burdened with responding to this information request. In a few instances, school districts were contracted directly, but only when the State Agency was unable to provide a copy of the contract and the district fell into the certainty strata.

Upon receipt of a copy of the contract file for each of the sampled school districts, the contents were reviewed for completeness. All documents noted on the cover sheet were accounted for and any

deficiencies were noted. Provisions for noting that documents did not exist (for example, not all contracts have amendments) were also incorporated in the cover sheet. If a document was not included due to an apparent oversight, the State Agency (and, in limited cases, the district) was re-contacted.

As noted above, virtually all contracts were provided by State Agencies. However, there is no way to be certain that the contracts on file at the State Agency are the same as the final signed contracts on file with the school district. For example, some contracts on file with the State Agency were not signed, suggesting that they were review copies submitted to the State Agency in advance of signing. Also, many States did not have supporting documentation, such as the RFP or Invitation to Bid, on file.

Table A-1 summarizes the results of our request to each State Agency. Overall, 42.8 percent of the contract files contained the contract and supporting information of the type described above. It should be noted that the States are only required to maintain a copy of the current contract on file. Thus, the issue being considered here is not compliance with requirements, rather the availability of a more complete set of documents. The reason why this is of interest is that the contract review results clearly indicate that contract documents vary significantly in the amount and specificity of requirements and performance parameters (i.e., who does what and exactly what the contractor is expected to do). One

Table A-1: Contents of Contract File Provided by State Child Nutrition Agency as Reviewed

	Percent
Contract only	57.2%
Contract and supporting documentation	42.8%
TOTAL	100.0%

reason for this appears to be that contracts rely upon other documents, especially bid documents. Because it was not possible to obtain these documents from all State agencies and to examine these documents, it is difficult to cite this as a cause of the lack of specificity and detail that was evident. The primary remaining reason is that many contracts do not provide sufficient information to support effective performance and oversight by the FSMC and school district.

A more in-depth consideration of source of the contract led to a tabulation of the types of documents available from the State Agency for each State. The States were assigned to one of three categories: States with the contract and supporting documentation for all contracts; States with the contract and no additional supporting documents; and States with contract files that fell into both categories. The results are presented in Table A-2.

Contract Abstracting

Prior to collecting the contracts, a small group of contract files were reviewed to identify the typical clauses, terms and services likely to be contained in a contract between a school district and an FSMC. Then, the draft review form was modified and expanded to incorporate the full range of data that might be available in each contract. The form was also submitted to FNS for review. Data elements corresponding with each clause, term, and service area were assigned a basic set of numeric codes that could be entered into a database. Thus, for any given field, a code was developed to describe the necessary text. This document was used to ensure that data were abstracted consistently. The actual contract review proceeded through these stages.

Contract Review Training: A training session was held for all staff assigned to the abstracting task. The training was organized around a contract abstraction manual which provided:

- Descriptions of the roles and responsibilities of the FSMC contract reviewers and supervisors;
- Descriptions of the FSMC data contract review document and a question-by-question guide to the document's use;
- Definitions of acceptable and unacceptable codes and interpretations;
- A guide to key sections of contracts in which important information may be found;

Table A-2: States with Supporting Documentation for FSMC Contracts.

States with Supporting Documentation for All contracts

	Percent of Category	Percent of Total
New York	91.6%	13.9%
Oregon	6.6%	1.0%
Florida	0.9%	0.1%
Utah	0.9%	0.1%
TOTAL	100.0%	15.2%

States with No Supporting Documentation in Contract File

	Percent of Category	Percent of Total
New Jersey	51.3%	18.6%
Ohio	11.0%	4.0%
Minnesota	7.7%	2.8%
California	7.0%	2.5%
Washington	5.6%	2.0%
Connecticut	5.6%	2.0%
Virginia	5.0%	1.8%
Indiana	2.8%	1.0%
New Hampshire	2.0%	0.7%
Montana	2.0%	0.7%
TOTAL	100.0%	36.3%

States with Supporting Documentation for Some, but not All, Contracts

	Contract Only	Contract and Documentation	Percent of Category	Percent of Total
Pennsylvania	86.1%	13.9%	30.5%	14.8%
Illinois	17.9%	82.1%	21.9%	10.6%
Michigan	30.9%	69.1%	12.5%	6.1%
Massachusetts	12.2%	87.8%	12.3%	5.9%
Texas	3.3%	96.7%	8.6%	4.2%
Vermont	58.8%	41.2%	5.1%	2.5%
Arizona	6.7%	93.3%	4.3%	2.1%
Rhode Island	87.8%	12.2%	2.4%	1.2%
Wisconsin	83.8%	16.2%	1.8%	0.9%
Colorado	50.0%	50.0%	0.6%	0.3%
TOTAL			100.0%	48.5%

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- A detailed review of the contact abstracting form; and,
- An overview of the FSMC contract database and data-keying system for tabulating contract information.

Contract Review and Abstraction: Each contract file was thoroughly reviewed by trained individuals. Care was taken to avoid interpretations and conjecture about the intent of contract language. If there was any doubt about the specificity of a point of fact (e.g., a service provided or a requirement placed upon the FSMC by the district) the coding attempted to reflect this uncertainty. Virtually all of the information was coded into numeric categories. For this reason, the data in the contract review data base are categorical data.

As the abstracting progressed, it was necessary to expand upon the initial set of codes. The database was constructed to allow persons keying the data to add new codes defined by the abstractor if those provided in the contract review form were inadequate to describe the text in the contract. The definition of each code was recorded directly into the data base. All data were dual-keyed and checked for errors.

Contract abstract verification: Following the review of the contract file, each reviewer re-examined the information recorded on the abstracting form to ensure that all fields were accurately and properly completed. In those instances where the reviewer was unable, based on the available information, to make a determination, this fact was documented.

As the first round of contracts were abstracted, Price Waterhouse staff re-abstracted these same contracts, documented discrepancies, and provided supplemental instructions to the reviewers. As the work progressed, thirty percent of all contract files were randomly selected for independent re-review by an FSMC contract review supervisor. Contracts selected for re-review were assigned to a reviewer who had not seen the file. Also, reviewers were directed to refrain from taking notes in the margins or otherwise marking the contract documentation during the review process. In this manner, independence in reviews was ensured as reviewers were unable to differentiate between contracts being reviewed for the first or second time.

The re-review of contracts following the same criteria as first-time reviews. The review supervisor maintained a list of school districts selected for review and re-review and monitored the

timeliness and progress of the review process. The first and second reviews were compared, and discrepancies were resolved by the first and second reviewer or a supervisor. When the discrepancies suggested a pattern, all abstractors were informed of this potential problem. In addition, the contract review supervisor examined all abstracting work on a routine basis.

Data transcription, error detection, and resolution: Once the contracts and data input forms were reviewed by the supervisor, the data input forms were separated and set aside to be transcribed into the appropriate database. The supervisor was responsible for monitoring the completion of the data entry process. The database consisted of seven Lotus 2.2 spreadsheets.[3] Codes for textual entries appeared in the database. When other codes were necessary, the person keying the data was able to document new codes in a designated area on the spreadsheet.

After all data was keyed into the spreadsheet, the information was converted to a SAS data set. Analysis to detect data problems was completed using SAS. Tests included:

- Computing and examining the distribution of each of the approximately 250 variables to ensure that entries were valid and within predefined ranges; and

- Comparisons of related data fields to ensure that responses were consistent, logical, and in accordance with dependency patterns (e.g., a yes response was followed by valid subsequent data, while a no reflected a skip to the next applicable variable).

Errors detected through this process were corrected by referring back to the abstraction form or the contract document, depending on the nature of the error. Once all error checking was completed, the data base was judged to be ready for preliminary analysis.

Data Analysis

The first step in the analysis was to prepare and review frequencies for each variable. At this point, it was necessary to combine variables that were logically related. To illustrate, the terms of

[3] The file structure corresponded to logical sections of the data base, determined by the capacity of the spread sheet to contain a workable number of data fields.

payment or fee structure of contracts were not simple constructs such as per meal cost plus an administrative fee. Often the there are multiple fees -- administrative, management -- and the basis for the application of the fee might be per meal or an annual value. Numerous permutations were identified and considerable effort was required to adequately define the combinations. This was done to avoid the possibility of misleading results if simple (duplicated) counts were reported for the number of contacts that used a particular type of fee. The tabulations were submitted to FNS for joint inspection.

It should be noted that these data are largely descriptive and are reflective of events and activities that are not likely to reflect underlying causes or structures. Considerable analysis was undertaken to identify patterns that might be attributed to specific causes such as degree of involvement of State Agencies, size of the food service management companies, and size of district. The basic rationale for this approach is summarized below for each variable:

- **FSMC Size**. It was hypothesized that the larger national FSMCs would be more sophisticated in the development of contracts. However, this hypothesis was not supported. Strong contracts can be found between districts and FSMCs of varying sizes.

- **District Size.** A pattern similar to that expected for FSMC size was hypothesized for district size. However, upon further inspection, it was evident that district size is not related to contract content. Thus, it is inappropriate to necessarily assume that larger school districts are likely to be more accomplished at procurement.

- **State Agency Involvement**. It was hypothesized that those States exerting greater influence on the contracting process might produce stronger, better specified contracts. However, there are only three States with FSMC contracts (New York, Illinois, and Florida) which fit in this category; an insufficient number of States upon which to base conclusions.

- **District Control of Food Services**. It was hypothesized that contracts would vary in the amount of control of food services retained by the school district. An important component of the FNS guidance described in Chapter I is the description of activities and responsibilities that a

school district must retain. Some of these responsibilities, such as maintaining the NSLP agreement and processing of free and reduced-price meal applications, are not controlling *per se*. Many of the responsibilities such as control of accounts, signing of reimbursement claim forms, monitoring the meal program, control of donated commodities, and control of contracts do provide the mechanisms by which a school district can control its meal program. Specific contract reference to "applicable Federal regulations" include all of responsibilities and provide a school district with broad control. However, when contracts specify each of these factors, control is increased. The difficulty, from an analytic standpoint is that each of the responsibilities vary in strength; they are not of equal strength. Because of the conceptual difficulty of this construct and the fact that actual practice may vary from the contract language, it was determined that this analysis would not be sufficiently informative.

Analysis based on these variables did not add meaningful information about variations in contract terms and conditions. Additional multivariate analyses, including regression and partial correlation analysis, were explored in an attempt to explain pricing and reimbursement structures. These analyses did not yield useful results and are not presented in this report.

Overview

This appendix describes the results of analysis to determine the extent to which contracts between school districts and FSMCs have their origin with the school district, which is the agency issuing the contract, or the FSMC which, is the organization that provides the service.

The Origin of the Contract

When designing the contract review methodology, sample contracts were examined to determine the types of information that might be available. One observation resulting from this examination was that the patterns of language usage suggested that the contracts had been drawn up by the Food Service Management Company. Further analysis of this observation was pursued because origin of the contract would seem to be related to the degree of control exercised by a school district over the procurement process.

For each contract, the reviewer examined the use of language and based on this, classified the contract in one of three ways: FSMC contract, school district contract, or unable to determine. Some of the clues used included:

- Whether the name of the FSMC or district was inserted into blanks or was part of the original text;
- How the contract referred to the parties to the contract. For example, a contract that used "the district" while using the name of the FSMC was classified as an FSMC contract. In contrast, a contract that specified the name of the district while referring to the FSMC as "company" was classified as district contract (except in those instances where the State Agency provides sample contracts).

While not conclusive methodology, for approximately 81 percent of the contracts, a probable determination was possible.

Results

Of the contracts that were reviewed, 44.2 percent appeared to have been developed by the school district or based on a model contract developed by the State Agency. FSMC contracts were used 36.7 percent of the time. About 19 percent of the contracts could not be classified. Although there are no specific requirements that would preclude the use of a FSMC-provided contract, the prevalence of this practice does suggest the potential for less than rigorous management by school districts that use an FSMC-developed contract.